

United States
Circuit Court of Appeals
For the Ninth Circuit

M. A. WYMAN; M. A. WYMAN, doing business
as M. A. WYMAN LUMBER COMPANY;
and M. A. WYMAN, M. H. WYMAN and
EDWARD DORAN, doing business as the
WYMAN MILL COMPANY,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division



No. 11701

United States
Circuit Court of Appeals
For the Fifth Circuit

M. A. WYMAN; M. A. WYMAN, doing business
as M. A. WYMAN LUMBER COMPANY;
and M. A. WYMAN, M. H. WYMAN and
EDWARD DORAN, doing business as the
WYMAN MILL COMPANY.

Appellants.

vs.

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Upon Appeal from the District Court of the United States
for the Western District of Washington,
Northern Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Attorneys for Appellee.

In the District Court of the United States for the
Western District of Washington, Northern
Division

Civil Action No. 1279

CHESTER BOWLES, Administrator, Office of
Price Administration,

Plaintiff,

vs.

M. A. WYMAN, d.b.a. M. A. Wyman Lumber
Company, M. A. WYMAN, M. H. WYMAN
and EDWARD DORAN, d.b.a The Wyman
Mill Company, and M. A. WYMAN, M. H.
WYMAN and EDWARD DORAN and THE
GRANITE FALLS PLANING MILL, a cor-
poration,

Defendants.

COMPLAINT FOR INJUNCTION AND TREBLE DAMAGES

Comes now plaintiff, above named, and for his
causes of action against defendants, above named,
alleges:

Count I.

1. That the Office of Price Administration is an
agency of the Government of the United States of
America, created by the provisions of Section 201(a)
of the Emergency Price Control Act of 1942 (50
U.S.C.A. 901 and 921), as amended (56 Stat. 765)
(57 Stat. 566), hereinafter referred to as the "Price

Control Act," and that Chester Bowles, plaintiff herein, is the duly appointed, qualified and acting Administrator thereof.

2. That jurisdiction of this cause of action is conferred upon the above entitled court by the provisions of Section 205(c) of the Emergency Price Control Act, as amended.

3. That the defendant M. A. Wyman, doing business as M. A. Wyman Lumber Company, now is, and has been at all times hereinafter mentioned a lumber dealer with his principal place of business in King County within the jurisdiction of this court.

4. That the defendants M. A. Wyman, M. H. Wyman and Edward Doran, a co-partnership, doing business as the Wyman Mill Company of Granite Falls, Washington, now are, and were at all times hereinafter mentioned, manufacturers of west coast lumber with their principal place of business in Snohomish County [2*] within the jurisdiction of this court.

5. That the defendant, The Granite Falls Planing Mill, Incorporated, a corporation, duly organized and existing under the laws of the State of Washington, is now, and was at all times hereinafter mentioned, operating a planing mill, processing or surfacing lumber with its principal plant in Snohomish County within the jurisdiction of this Court. That plaintiff is informed and believes and therefore alleges, that the defendants M. A. Wyman, M. H. Wyman and Edward Doran are the principal stockholders and officers of the defendant corporation.

* Page numbering appearing at foot of page of Reporter's certified Transcript of Record.

6. That in the judgment of the said Administrator, the defendants have engaged in acts and practices which constitute a violation of Section 4(a)(2), Section 4(b)(1)(2) and Section 4(c) of Revised Maximum Price Regulation 539, as amended (10 Federal Register 3224), hereinafter referred to as the "Regulation," which was issued pursuant to Section 2(a), Section 202(b) and Section 201(d) of said Price Control Act; and that therefore, pursuant to Section 205(a) of said Price Control Act, the Administrator makes this application for an injunction to enforce compliance with the aforementioned regulation.

7. That at all times and including July 5, 1944, said amended regulation has been, and now is in full force and effect, requiring in Section 4(a)(2), Section 4(b)(1)(2) and Section 4(c) that custom milling service charges may not be made unless authorization is obtained in the manner set forth in said regulation.

8. That at all times since and including the effective date of said regulation, said defendants have been, and now are sellers subject to said regulation, and that said defendants have failed to obtain authorization in conformation with Section 4(a)(2), Section 4(b)(1)(2) and Section 4(c), as provided, thereby violating said regulation.

9. That the defendants have sold in the course of trade or business commodities to-wit, western softwood lumber as defined in Revised Maximum Price Regulation 539, as amended (10 Federal Register 3224), at prices in [3] excess of the maximum price fixed by the regulation.

Count II.

1. Plaintiff incorporates herein and makes a part hereof, as fully as if set forth herein, Paragraphs 1, 2, 3, 4 and 5 of Count I of this complaint.

2. That in the judgment of the said Administrator, defendants have engaged in acts and practices which constitute a violation of Section 7(d)(1)(2) of Revised Maximum Price Regulation 26, as amended (9 Federal Register 1016, 3513, 4227, 7505, 9720, 11,112, 12,537; 10 Federal Register 4661, 5099, 5323).

3. That at all times since and including June 9, 1943, said amended regulation has been, and now is in full force and effect requiring in Section 7(d)(1)(2) that delivery charges preceding railroad shipments may be made only after special written permission is granted by the lumber branch of the Office of Price Administration, Washington, D. C., given after an application is made which recites facts showing the applicant is entitled to make the charge.

4. That at all times since and including the effective date of said regulation, said defendants *have and* now are sellers subject to said regulation, and that said defendants have sold distribution services to-wit, trucking charges in connection with western softwood lumber shipped by them in the course of trade or business in violation of Section 7(d)(1)(2) of Revised Maximum Price Regulation 26, as amended.

Count III.

1. Plaintiff incorporates herein and makes a part hereof, as fully as if set forth herein, Paragraphs 1, 2, 3, 4 and 5 of Count I of this complaint.

2. That in the judgment of said Administrator, the defendants have engaged in acts and practices which constitute a violation of Section 4(a)(2), Section 4(b)(1)(2) and Section 4(c) of Revised Maximum Price Regulation 539, as amended (10 Federal Register 3224), hereinafter referred to as the "Regulation," which was issued pursuant to Section 2(a), Section 202(b) and [4] Section 201 (d) of said Price Control Act; and that therefore, pursuant to Section 205(e) of said Price Control Act, the Administrator brings this suit for treble damages.

3. That at all times since and including July 5, 1944, said amended regulation has been, and now is in full force and effect, requiring in Section 4 (a)(2), Section 4(b)(1)(2) and Section 4(c) that custom milling service charges may not be made unless authorization is obtained in the manner set forth in said regulation.

4. That at all times since and including the effective date of said regulation, said defendants have been, and now are sellers subject to said regulation, and that said defendants have failed to obtain authorization in conformation with Section 4(a)(2), Section 4(b)(1)(2) and Section 4(c), as provided, thereby violating said regulation.

5. That the defendants have sold in the course of trade or business commodities, to-wit, western

softwood lumber as defined in Revised Maximum Price Regulation 539, as amended, at prices in excess of the maximum price fixed by the regulation. Plaintiff is informed and believes and therefore alleges, that three times the aggregate amount by which the prices received by the defendants in these sales exceed the maximum price provided under the regulation is \$57,064.35.

Count IV.

1. Plaintiff incorporates herein and makes a part hereof, as fully as if set forth herein Paragraphs 1, 2, 3, 4 and 5 of Count I of this complaint.

2. That in the judgment of the said Administrator, the defendants have engaged in acts and practices which constitute a violation of Section 7 (d)(1)(2) of Revised Maximum Price Regulation 26, as amended, hereinafter referred to as the "Regulation," which was issued pursuant to Section 2(a), Section 202(b) and Section 301(d) of said Price Control Act; and that therefore, pursuant to Section 205(e) of said Price Control Act, the Administrator brings this suit for treble damages.

3. That at all times since and including June 9, 1943, said amended [5] regulation has been, and now is in full force and effect requiring in Section 7(d)(1)(2) that delivery charges preceding railroad shipments may be made only after special written permission is granted by the lumber branch

of the Office of Price Administration, Washington, D. C., given after an application is made which recites facts showing the applicant is entitled to make the charge.

4. That at all times since and including the effective date of said regulation, said defendants have been and now are sellers subject to said regulation, and that said defendants have sold distribution services, to-wit, trucking charges in connection with western softwood lumber shipped by them in the course of trade or business in violation of Section 7(d)(1)(2) of Revised Maximum Price Regulation 26, as amended. Plaintiff is informed and believes and therefore alleges, that three times the aggregate amount by which the prices received by the defendants exceed the maximum price provided under the regulation is \$5,283.48.

Wherefore, Plaintiff Prays:

1. A preliminary and final injunction against said defendants, their agents, employees, and any and all persons acting in concert or participation with said defendants:

A. Ordering and directing them forthwith to fix the price of all lumber sold and delivered by them in accordance with the applicable provisions of Revised Maximum Price Regulation 539, as amended (10 Federal Register 3224), and particularly with Section 4(a)(2), Section 4(b)(1)(2) and Section 4(c) of said regulation.

B. Ordering and directing them forthwith to fix the transportation charges on all lumber sold and delivered by them in accordance with the applicable provisions of Revised Maximum Price Regulation 26, as amended (9 Federal Register 1016, 3513, 4227, 5705, 9720, 11,112, 12,537; 10 Federal Register 4661, 5099, 5323) and particularly 7(d)(1)(2) of said regulation. [6]

C. Ordering and directing them to do every other act required to be done by said regulation, and to do every act required to be done by any other applicable regulation or order relating to prices, heretofore or hereafter issued pursuant to said Price Control Act, as amended or extended.

D. Enjoining and restraining them permanently from doing any other act prohibited by said regulations, and from doing any act prohibited by any other applicable regulation or order relating to prices, heretofore or hereafter issued pursuant to said Price Control Act, as amended or extended.

2. Judgment in favor of the plaintiff and against the defendants in the sum of \$62,347.83.

3. And for such other and further relief as the court may deem just and equitable in the premises.

/s/ DANIEL M. REAUGH,
District Enforcement
Attorney,

/s/ ANDREW H. HITCHCOCK,
Enforcement Attorney,
Attorneys for Plaintiff.

Seattle District Office,
Office of Price Administration,
4451 White-Henry-Stuart Building,
Seattle, Washington.

[Endorsed]: Filed July 11, 1945. [7]

District Court of the United States for the Western
District of Washington, Northern Division
Civil Action File No. 1279

CHESTER BOWLES, Administrator, Office of
Price Administration,
Plaintiff,

vs.

M. A. WYMAN, d.b.a. M. A. Wyman Lumber
Company, M. A. WYMAN, M. H. WYMAN
and EDWARD DORAN, d.b.a. The Wyman
Mill Company, and M. A. WYMAN, M. H.
WYMAN and EDWARD DORAN and THE
GRANITE FALLS PLANING MILL, a cor-
poration,
Defendants.

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon Andrew H. Hitchcock, plaintiff's attorney, whose address is 4451 White-Henry-Stuart Building, Seattle, Washington, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: July 11, 1945.

[Seal] MILLARD P. THOMAS,
Clerk of Court.

By /s/ MARIAN MILLER,
Deputy Clerk.

Return on Service of Writ

I hereby certify and return, that on the 11th day of July, 1945, I received the within summons, together with Complaint for Injunction and Treble Damages, and that thereafter I served the same on the therein named M. A. Wyman Lumber Company by handing to and leaving a true and correct copy thereof with M. A. Wyman, owner, and I also served the same on the therein named Wyman Mill Company by handing to and leaving a true and correct copy thereof with M. A. Wyman, partner, and I also served the same on the therein named

Granite Falls Planing Mill, a corporation, by handing to and leaving a true and correct copy thereof with M. A. Wyman as an officer in company, of the 13th day of July, 1945, at Seattle, Washington.

Marshal's fees: Service, \$6.00.

DONALD F. MILLER,
United States Marshal.

By PATRICK J. BRADLEY,
Deputy United States
Marshal. [9]

[Endorsed]: Filed July 19, 1945. [8]

[Title of District Court and Cause.]

MOTIONS TO QUASH THE SERVICE OF
SUMMONS AND COMPLAINT OF THE
GRANITE FALLS PLANING MILL, A
CORPORATION

(Rule 4d FRCP, USCA 28, Par. 723c)

Comes now the Granite Falls Planing Mill, a corporation, defendant above named, and appearing specially for the purpose of this motion and for no other purpose, respectfully moves the Court to quash the service of the summons and complaint in the above cause made on M. A. Wyman as an officer of said Granite Falls Planing Mill, a corporation, on July 13, 1945, on the ground that said M. A. Wyman was not an officer of said corpora-

tion, nor a managing or general agent thereof, or any other agent of said corporation authorized by appointment or by law to receive service of process on July 13, 1945, nor at any time during 1945.

This motion is based upon the records and files in the above entitled cause and the affidavit of M. A. Wyman hereto attached.

C. E. HUGHES,

Attorney for the Granite Falls Planing Mill, a corporation.

State of Washington,
County of King—ss.

M. A. Wyman, being first duly sworn, on oath deposes and says:

That he is the M. A. Wyman mentioned in the return of service made by Patrick J. Bradley, Deputy U. S. Marshal, dated July 11, 1945, and filed in the above entitled cause on July, 1945, in which said Deputy Marshal states [10] that he served a copy of the summons and complaint in the above cause on M. A. Wyman as an officer of Granite Falls Planing Mill, a corporation, on July 13, 1945.

Affiant states that he was not an officer, director or stockholder of said corporation on July 13, 1945, nor at any time during 1945, nor a managing or general agent thereof or any other agent of said corporation authorized by appointment or by law to receive service of process on July 13, 1945, nor at any time during 1945.

This affidavit is made for the purpose of quashing the service of the summons and complaint in the above cause on affiant as an officer of said corporation or any kind of an agent connected with said corporation.

M. A. WYMAN.

Subscribed and sworn to before me this 1st day of August, 1945.

[Seal] C. E. HUGHES,
Notary Public in and for the State of Washington,
residing at Seattle.

Copy received August 1, 1945.

ANDREW HITCHCOCK,
per D. B.,
Attorney for Plaintiff.

[Endorsed]: Filed Aug. 10, 1945. [11]

[Title of District Court and Cause.]

AMENDED COMPLAINT FOR INJUNCTION
AND TREBLE DAMAGES

Comes now plaintiff, above named, and for his causes of action against defendants, above named, alleges:

Count I.

1. That the Office of Price Administration is an agency of the Government of the United States of America, created by the provisions of Section 201 (a) of the Emergency Price Control Act of 1942 (50 U.S.C.A. 901), as amended (56 Stat. 765; 57 Stat. 566, P. L. 108, 79th Congress, First Session),

hereinafter referred to as the "Price Control Act," and that Chester Bowles, plaintiff herein, is the duly appointed, qualified and acting Administrator thereof.

2. That jurisdiction of this cause of action is conferred upon the above entitled court by the provisions of Section 205(c) of the Price Control Act, as amended.

3. That the defendant, M. A. Wyman, doing business as M. A. Wyman Lumber Company was, at all times hereinafter mentioned, engaged in the business of buying and selling lumber with his principal place of business in King County within the jurisdiction of this court. [12]

4. That, the defendants M. A. Wyman, M. H. Wyman and Edward Doran, a co-partnership, doing business as Wyman Mill Company, were, at all times, hereinafter mentioned, engaged in the business of producing West Coast rough softwood lumber with their principal place of business in Snohomish County within the jurisdiction of this court.

5. That, the defendant, the Granite Falls Planing Mill, Inc., a corporation, duly organized and existing under the laws of the State of Washington, was, at all times, hereinafter mentioned, engaged in the business of milling western softwood lumber with its principal place of business in Snohomish County within the jurisdiction of this court. That, the principal officers and stockholders of said corporation from July 11, 1944, to and including December 22, 1944, were M. A. Wyman, M. H. Wyman, and Edward Doran.

6.(A) That, in the judgment of the said Administrator, the defendants, from July 11, 1944, to and including December 22, 1944, were engaged in the acts and practices hereinafter described which constituted a violation of Maximum Price Regulation 539, Custom Milling and Kiln Drying of Western softwoods (9 Fed. Reg. 6152), hereinafter referred to as "MPR 539" which was issued pursuant to Section 2(a), Section 202(b) and Section 201(d) of said Price Control Act; and that, therefore, pursuant to Section 205(a) of said Price Control Act, the Administrator makes this application for an injunction to enforce compliance with said MPR 539.

(B) That, at all times, since June 5, 1944, MPR 539 has been in effect establishing maximum prices for custom milling and kiln drying services as defined therein on specified Western softwood lumber.

(C) In particular, MPR 539 provides that custom mill under common ownership or control with saw mills producing Western softwood lumber cannot qualify as custom mills under MPR 539 unless and until they obtain special authorization from the Office of Price Administration at its Regional Office nearest the operation. Unless such authorization is obtained, the maximum prices which [13] the seller may charge the purchaser, for both the lumber and for milling or kiln drying are the ceiling prices fixed in the appropriate mill regulation for the end product reaching the purchaser after milling or kiln drying.

(D) That, the defendants, from July 11, 1944, to and including December 22, 1944, owned and controlled a saw mill producing lumber of a species of Western softwood lumber covered by RMPR 26, and also owned and controlled a custom mill selling and providing custom mill services on the lumber produced by the saw mill to purchasers for use in the course of trade or or business. That, the defendants did not secure authorization from the Office of Price Administration at its Regional Office in San Francisco to charge custom milling prices as set forth in MPR 539 for such services, and that the total prices charged for said services and lumber were in excess of the maximum prices established by RMPR 26 for the lumber as delivered to the purchaser.

6. That, said overcharges heretofore mentioned in Paragraph 6 hereof are fully set forth in Exhibit "A" which is affixed hereto and made a part hereof as fully as if set forth herein.

Count II.

1. Plaintiff incorporates herein and makes a part hereof, as fully as if set forth herein, Paragraphs 1, 2, 3, 4 and 5 of Count I of this complaint.

2.(A) That, the defendants from July 11, 1944, to and including December 22, 1944, were engaged in the acts and practices hereinafter described which constituted a violation of Maximum Price Regulation 539, Custom Milling and Kiln Drying of Western softwoods (9 Fed. Reg. 6152), hereinafter referred to as "MPR 539" which was issued pur-

suant to Section 2(a), Section 202(b) and Section 201(d) of said Price Control Act; and that therefore pursuant to Section 205(e) of said Price Control Act, the [14] Administrator brings this action for treble damages.

(B) That, at all times, since June 5, 1944, MPR 539 has been in effect establishing maximum prices for custom milling and kiln drying services as defined therein on specified Western softwood lumber.

(C) In particular, MPR 539 provides that custom mills under common ownership or control with saw mills producing Western softwood lumber cannot qualify as custom mills under MPR 539 unless and until they obtain special authorization from the Office of Price Administration at its Regional Office nearest the operation. In any such cases, the maximum prices which the seller may charge the purchaser for both the lumber and for milling or kiln drying are the ceiling prices fixed in the appropriate mill regulation for *the and* product reaching the purchaser after milling or kiln drying.

3. That, said overcharges heretofore mentioned in Paragraph 2 heretofore are fully set forth in -Exhibit "A" which is affixed hereto and made a part hereof by reference as fully as if set forth herein. That, the amount by which the prices charged by the defendants exceeds the maximum prices provided under said regulation is \$19,130.89.

Wherefore, Plaintiff prays:

1. A preliminary and final injunction against

said defendants, their agents, employees, and any and all persons acting in concert or participation with said defendants:

- A. Ordering and directing them forthwith to fix the price of all custom milling services sold or provided by them in accordance with the applicable provisions of Maximum Price Regulation 539 (9 Fed. Reg. 6152).
- B. Ordering and directing them to do every other act required to be done by said regulation, and to do every act required to be done by any other applicable regulation or order relating [15] to prices, heretofore or hereafter issued pursuant to said Price Control Act as amended or extended.
- C. Enjoining and restraining them permanently from doing any other act prohibited by said regulations, and from doing any act prohibited by any other applicable regulation or order relating to prices, heretofore or hereafter issued pursuant to said Price Control Act, so amended or extended.

2. Judgment in favor of the plaintiff and against the defendants for three times the overcharges which sum is \$57,392.67.

3. And for such other and further relief as the court may deem just and equitable in the premises.

/s/ ANDREW H. HITCHCOCK,

Enforcement Attorney.

s/ DANIEL M. REAUGH,

Attorneys for Plaintiff.

EXHIBIT A

Sales by Defendants from July 11, 1944 to December 22, 1944

Purchasers	Date	Amount Collected	Ceiling Price	Amount Over- charges
George W. Ulteh Lumber Co.....	7-29-44	\$243.97	\$50.58	\$193.39
The A. C. Houston Lbr. Co.....	7-10-44	198.91	40.64	158.27
J. B. Houston & Son.....	7-12-44	206.73	41.25	165.48
Houston Lumber Co.....	7-17-44	234.09	49.65	184.44
Houston Bros., Inc.....	7-11-44	245.78	43.94	201.84
Houston Lumber Co.....	7-17-44	237.93	49.84	188.09
Houston Lumber Co.....	7-14-44	233.09	47.17	185.92
J. B. Houston & Son.....	7-17-44	221.12	44.79	176.33
J. Lentin Lumber Co.....	7-19-44	237.11		237.11
Klein Lumber Co.....	7-18-44	147.22	10.47	136.75
Houston Lumber Co.....	7-19-44	251.16	50.16	201.00
J. B. Houston & Son.....	7-20-44	226.92	46.62	180.30
J. B. Houston & Son.....	7-25-44	223.45	44.85	178.60
Coerper Bros. Lumber Co.....	7-22-44	236.28	11.75	224.53
McCoy Lumber Co.....	7-27-44	222.50	27.19	195.31
McCoy Lumber Co.....	7-25-44	255.72	35.12	220.60
Hazen Lumber Co.....	7-25-44	150.01	7.90	142.11
Houston Lumber Co.....	7-31-44	256.11	54.20	201.91
J. B. Houston & Son.....	8- 1-44	195.02	30.39	164.63
Houston Lumber Co.....	8- 2-44	222.69	41.17	181.52
Houston Lumber Co.....	8- 5-44	242.05	49.48	192.57
Houston Lumber Co.....	8- 5-44	226.16	47.85	178.31
Houston Bros., Inc.....	8- 7-44	259.70	38.70	221.00
Houston Lumber Co.....	8-11-44	239.27	50.14	189.13
J. B. Houston & Son.....	8-11-44	240.60	48.42	192.18
George W. Ulteh Lumber Co.....	8-12-44	243.77	51.48	192.29
George W. Ulteh Lumber Co.....	8-14-44	232.43	46.48	185.95
J. Add Adams.....	8-24-44	193.67	39.16	154.51
Hosmer Lumber Co.....	8-16-44	227.22	35.52	191.70
St. Charles Lumber & Fuel Co.....	8-17-44	204.51	41.31	163.20
Boekelheide Lumber Co.....	8-24-44	197.80	40.45	157.35
Houston Bros., Inc.....	8-22-44	251.78	44.95	206.83
St. Charles Lbr. & Fuel Co.....	8-18-44	222.67	44.22	178.45
Huebsch Mfg. Co.....	9- 9-44	272.99	43.10	229.89
St. Croix River Co.....	8-31-44	198.03		198.03
Elliott Lumber Co.....	8-31-44	219.42	43.88	175.54

Purchasers	Date	Amount Collected	Ceiling Price	Amount Over- charges
James Shaw & Son Co., Inc.....	8-31-44	\$231.02	\$47.56	\$183.46
Erwerwe Lumber Co.....	9- 5-44	163.76	46.46	117.30
Elliot Lumber Co.....	9- 6-44	241.71	38.60	203.11
Elliot Lumber Co.....	9-12-44	228.48	10.60	217.88
Central Lumber Sales Co.....	9- 7-44	228.71	46.27	182.44
J. J. Hussey Lumber Co.....	9- 8-44	229.47	46.78	182.69
Frank W. Grubb & Sons Co.....	9-12-44	239.63	38.22	201.41
Hoerper Lumber Co.....	9-15-44	220.32		220.32
Central Lumber Sales Co.....	9-13-44	204.39	41.58	162.81
Home Lumber Co.....	9-15-44	202.13	33.47	168.66
Central Lumber Sales Co.....	9-15-44	190.06	38.40	151.66
Central Lumber Sales Co.....	9-20-44	213.27	32.93	180.34
Central Lumber Sales Co.....	9-21-44	186.38	39.65	146.73
Sachmayer Lumber Co.....	9-25-44	215.81	28.54	187.27
Central Lumber Sales Co.....	9-26-44	171.00	35.63	135.37
Central Lumber Sales Co.....	9-30-44	241.66	45.05	196.61
Landan Mercantile Co.....	10- 2-44	233.71	39.98	193.73
Central Lumber Sales Co.....	10- 6-44	151.86	26.01	125.85
Landan Mercantile Co.....	10-11-44	231.06	38.47	192.59
Central Lumber Sales.....	10-11-44	207.25	31.03	176.22
Central Lumber Sales Co.....	10-11-44	187.42	25.60	161.82
Central Lumber Sales Co.....	10-13-44	238.31	43.83	194.48
J. Lentin Lumber Co.....	10-13-44	240.30	43.30	197.00
Central Lumber Sales Co.....	10-12-44	236.76	37.30	199.46
Central Lumber Sales Co.....	10-17-44	226.11	33.27	192.84
Airmount Mill & Lumber Co.....	10-17-44	288.70	42.32	246.38
St. Croix River Co.....	10-16-44	199.13	49.78	149.35
J. Lentin Lumber Co.....	10-20-44	229.70		229.70
Central Lumber Sales Co.....	10-23-44	211.33	28.76	182.57
Central Lumber Sales Co.....	10-24-44	177.88	35.65	142.23
Central Lumber Sales Co.....	10-24-44	225.21	35.91	189.30
Central Lumber Sales Co.....	10-25-44	241.06	24.17	216.89
J. W. Frank & Co.....	10-26-44	226.58	46.52	180.06
Central Lumber Sales Co.....	10-27-44	224.08	41.52	182.56
J. W. Frank & Co.....	10-27-44	183.32	40.23	143.09
Central Lumber Sales Co.....	10-28-44	231.96	46.42	185.54
Central Lumber Sales Co.....	10-30-44	254.27	33.29	220.98
Clatch Yards, Inc.....	10-30-44	45.45	13.63	31.82
St. Croix River Co.....	11- 1-44	215.14	53.78	161.36

Purchasers	Date	Amount Collected	Ceiling Price	Amount Over- charges
Central Lumber Sales Co.....	11- 3-44	\$241.27	\$32.56	\$208.71
Gillman Lumber & Cabinet Co.....	11- 2-44	146.14		146.14
Central Lumber Sales Co.....	11- 6-44	215.64	40.45	175.19
St. Croix River Co.....	11- 6-44	215.54	53.88	161.66
Coerper Lumber Co.....	11- 7-44	222.88	47.76	175.12
St. Croix River Co.....	11- 7-44	174.66	43.67	130.99
Central Lumber Sales Co.....	11-11-44	213.21	32.26	180.95
Central Lumber Sales Co.....	11-10-44	161.20	21.78	139.42
Central Lumber Sales Co.....	11-10-44	198.23	29.47	168.78
St. Croix River Co.....	11-13-44	177.75	44.44	133.31
Central Lumber Sales Co.....	11-14-44	240.23	41.60	198.63
Coerper Lumber Co.....	11-18-44	180.00		180.00
St. Croix River Co.....	11-16-44	174.87	43.72	131.15
Central Lumber Sales Co.....	11-18-44	234.58	36.00	198.58
St. Croix River Co.....	11-22-44	160.76	40.19	120.57
Central Lumber Sales Co.....	11-21-44	222.99	44.40	178.59
Central Lumber Sales Co.....	11-24-44	176.77	33.79	142.98
R. W. Frank & Co.....	11-22-44	160.02	29.89	130.13
Mandan Mercantile Co.....	11-25-44	217.84	36.38	181.46
Spellman & Co.....	11-28-44	232.09	47.18	184.91
Central Lumber Sales Co.....	11-30-44	183.99	28.34	155.65
J. W. Patterson Co.....	11-30-44	221.70	39.70	182.00
R. W. Frank & Co.....	11-30-44	236.59	28.99	207.60
Coerper Lumber Co.....	12- 4-44	205.70	41.47	164.23
W. J. Campbell Lumber Co.....	12- 6-44	173.45		173.45
St. Croix River Co.....	12-15-44	228.98	36.03	192.75
St. Croix River Co.....	12-15-44	219.27	36.46	182.81
St. Croix River Co.....	12-16-44	238.30	37.27	201.03
Central Lumber Sales Co.....	12-19-44	200.19	17.90	182.29
St. Croix River Co.....	12-19-44	223.60	34.02	189.58
St. Croix River Co.....	12-21-44	233.23	32.38	200.85
Central Lumber Sales Co.....	12-22-44	193.50	21.04	172.46

Total.....\$19,130.67

[Endorsed]: Filed Nov. 7, 1945.

In the District Court of the United States in and
for the Western District of Washington,
Northern Division.

Civil Action File No. 1279

CHESTER BOWLES, Administrator,
Office of Price Administration,

Plaintiff.

vs.

M. A. WYMAN, d.b.a. M. A. Wyman Lumber
Company, et al.,

Defendants.

SUMMONS IN CIVIL ACTION

To the above named Defendant:

You are hereby summoned and required to serve upon Andrew H. Hitchcock, plaintiff's attorney, whose address 3319 White-Henry-Stuart Building, Seattle 2, Washington an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] MILLARD P. THOMAS,
Clerk of the Court.

By /s/ SIGFRIED HENDRICKSON,
Deputy Clerk

Date, Nov. 7, 1945.

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 7th day of November, 1945, I received the within summons together with a copy of amended complaint for Injunction and Treble damages and that thereafter I served the same on the therein named M. A. Wyman, d.b.a. M. A. Wyman Lumber Company by handing to and leaving a true and correct copy thereof with M. A. Wyman at Seattle, Washington on the 3rd day of December, 1945. And I also served the therein named M. A. Wyman, M. H. Wyman and Edward Doran, d.b.a. The Wyman Mill Company by handing to and leaving a true and correct copy thereof with M. A. Wyman, Owner in the Company on the 3rd day of December, 1945, at Seattle, Washington and I also served the therein named M. A. Wyman, M. H. Wyman and Edward Doran by handing to and leaving a true and correct copy with each of them personally: M. A. Wyman on the 3rd day of December, 1945, M. H. Wyman on the 9th day of November, 1945 both at Seattle, Washington and Edward Doran on the 20th day of November at Granite Falls, Washington; and I also served the therein named Granite Falls Planning Mill, a corporation by handing to and leaving a true and correct copy thereof with M. H. Wyman, on the 9th day of November, 1945 at Seattle.

J. S. DENISE,

United States Marshal.

By /s/ JAMES M. SCHWERDFIELD.

Marshal's Fees: Travel \$11.94; Service \$12.00;
Total \$23.94.

[Endorsed]: Filed Dec. 4, 1945.

[Title of District Court and Cause.]

MOTION TO QUASH THE SERVICE OF THE
SUMMONS AND AMENDED COMPLAINT
ON THE GRANITE FALLS PLANING
MILL, a corporation, and M. H. WYMAN.

Come now M. H. Wyman and the Granite Falls Planing Mill, a corporation, defendants above named, and appearing specially for the purpose of this motion and for no other purpose, respectfully move the Court to quash the service of the summons and amended complaint in the above cause made on M. H. Wyman individually and as an officer of said Granite Falls Planing Mill, a corporation, on November 9, 1945, on the ground and original summons and complaint was filed herein, and summons was issued thereon July 11, 1945, and that no service of summons or complaint in said cause was made on said M. H. Wyman or said Granite Falls Planing Mill, a corporation, within three months after the issuance of said summons, and said action abated as to said defendants on October 11, 1945, as provided by Rule 15, Rules of the United States District Court for the Western District of Washington and the laws of the State of Washington, and cannot be revived by an amended complaint.

This motion is based upon the records and files in the above cause and the affidavit of C. E. Hughes hereto attached.

/s/ C. E. HUGHES,

Attorney for M. H. Wyman
and Granite Falls Planing
Mill, a corporation.

State of Washington,
County of King—ss.

C. E. Hughes, being first duly sworn on oath disposes and says: That he is the attorney for M. H. Wyman and Granite Falls Planing Mill, a corporation, defendants above named. That on July 11, 1945, the original summons and complaint was filed in the above cause and summons was duly issued thereon July 11, 1945, that no service of a summons or complaint in this cause was made on either of said defendants within three months after the issuance of said summons as provided by Rule 15 of this Court and the laws of the State of Washington. That neither of said defendants have appeared generally herein, nor has the time to effect service on said defendants or either of them been extended by any order as provided in said Rule 15.

That on November 7, 1945, nearly four months after said issuance of the original summons, plaintiff caused to be filed in the above Court and cause, a new summons and an amended complaint, and a new summons was issued thereon on said date, and on November 9, 1945, two copies of said summons and amended complaint on file herein were served on M. H. Wyman at Seattle, Washington, individually as President of said corporation, which is the only service ever made on said defendants, or either of them. That said M. H. Wyman has lived and has been in Seattle continuously at all times

since long prior to July 11, 1945, but no attempt was ever made to serve said summons or complaint or amended complaint on him until November 9, 1945.

That in accordance with the provisions of said Rule 15 and the laws of the State of Washington, said action abated and terminated as to said defendants on October 11, 1945, at which time this Court lost jurisdiction over said defendants, and said action cannot be revived by an amended complaint.

C. E. HUGHES,

Subscribed and Sworn to before me this 28th day of November, 1945.

[Seal]

LUCILE LASNIER,

Notary public in and for the State of Washington, residing at Seattle. [24]

Copy recd. 11/28/45,

A. H. HITCHCOCK,

Attorney for Plaintiff.

Copy recd. 11/28/45

OGDEN & OGDEN,

Attorneys for Edward Doran.

[Endorsed]: Filed Nov. 29, 1945.

[Title of District Court and Cause.]

MOTION TO QUASH THE SERVICE OF
SUMMONS AND AMENDED COMPLAINT
SERVED UPON DEFENDANT EDWARD
DORAN

Comes now Edward Doran, one of the defendants above named, appearing specially and for the purpose of this motion and for no other purpose whatsoever, and respectfully moves the Court to quash the service of the summons and amended complaint in the above entitled cause made on Edward Doran on November 20, 1945, on the ground that the original summons and complaint was filed herein on July 11, 1945, and that no service of a summons and original complaint in this said cause was made on Edward Doran at any time whatsoever on or subsequent to July 11, 1945, and that on November 20, 1945, defendant Doran was served with a summons attached to an amended complaint; that no order of court or permission of Court was ever granted, permitting the plaintiff to serve defendant Doran with a summons or amended complaint, nor was there any extension of time ever granted to the plaintiff in which to perfect service of the original summons and the original complaint; that at all times from and after July 11, 1945, defendant Doran was working at either Darrington or Granite Falls, in Snohomish County, Washington, and no attempt by him was ever made to evade service of the summons and complaint in this said cause [26] of ac-

tion. Accordingly, it is submitted that said cause of action was abated as to defendant Doran after the expiration of ninety days from and after July 11, 1945, as provided for by Rule 15 of the Local Rules of the United States District Court for the Western District of Washington, Northern Division, Relating to Civil Actions, and in accordance with the laws of the State of Washington relating to service of summons within ninety days after the date of the filing of said summons.

This motion is based upon the records and files of the above entitled cause and on the affidavit of Raymond D. Ogden, Jr., one of the attorneys for the defendant Doran herein.

OGDEN & OGDEN,
By RAYMOND D. OGDEN, JR.,
Attorneys for Defendant
Edward Doran.

Received copy Dec. 7/45.

ANDREW H. HITCHCOCK.

Received copy Dec. 7/45.

C. E. HUGHES,
Attorney.

[Endorsed]: Filed Dec. 8, 1945. [27]

[Title of District Court and Cause.]

AFFIDAVIT OF RAYMOND D. OGDEN, JR.,
IN SUPPORT OF MOTION TO QUASH
SERVICE OF SUMMONS AND AMENDED
COMPLAINT ON DEFENDANT EDWARD
DORAN

United States of America,
State of Washington,
County of King—ss.

Raymond D. Ogden, Jr., being first duly sworn, on oath deposes and says:

That he is one of the attorneys for the defendant Edward Doran in the above action; that the records in the above entitled cause show that the original summons in "Civil Action File No. 1279" was filed July 11, 1945, in accordance with the date stamped on the face of said summons; That Edward Doran was never served with the original summons or the original complaint in said action at any time; that the only summons served upon Edward Doran in the above entitled cause was on the 20th day of November, 1945, when he was served with a summons bearing a date stamped on the face thereof of November 7, 1945, which summons was attached to an amended complaint; that the defendant Edward Doran has not appeared generally in this action, nor has the time to effect service on the defendant Doran been extended by an order of court as provided for in Rule 15 of [28] the Local

Rules of the United States District Court for the Western District of Washington, Northern Division, Relating to Civil Actions.

That at all times from and after July 11, 1945, said Edward Doran was a resident of the State of Washington and was at all times working either in Granite Falls, Washington, or Darrington, Washington.

/s/ RAYMOND D. OGDEN, Jr.

Subscribed and sworn to before me this 7th day of December, 1945.

[Seal] NOLA N. BARRON,
Notary Public in and for the State of Washington,
residing at Seattle.

Received copy Dec. 7/45.

ANDREW H. HITCHCOCK.

Received copy 12/7/45.

C. E. HUGHES,
Attorney.

[Endorsed]: Filed Dec. 8, 1945. [29]

[Title of District Court and Cause.]

MOTION TO DISMISS COUNTS I AND II
OF THE AMENDED COMPLAINT

Come now all the defendants above named, except Edward Doran, and without waiving the special appearance herein of M. H. Wyman and Granite Falls Planing Mill, and in the event of the denial of their motion to quash, each of said defendants separately moves against plaintiff's amended complaint as follows:

1. To dismiss Count I thereof on the ground that said count does not allege facts sufficient to warrant or justify the issuance of a mandatory injunction or any other injunction against said defendants, or any of them, nor state a claim upon which relief can be granted; and on the further ground that it affirmatively appears from said amended complaint, that none of said defendants are now, or have at any time since December 22, 1944, violated any regulation, or that said defendants or any of them are now or have at any time since December 22, 1944, threatened to do so, or that plaintiff has shown any need or justification for an injunction.

2. To dismiss Count II thereof, on the ground that said count does not allege facts sufficient to constitute a cause of action against said defendants or any of them, nor state a claim [30] upon which relief can be granted, and on the further ground

that said defendants are in no way connected with the violation of any regulation.

These motions are made separately by each of said defendants, and are based upon the records and files in the above cause.

C. E. HUGHES,
Attorney for all the Defendants except Edward
Doran.

1026 Henry Building,
Seattle, Washington.

Copy received 11/28/45.

A. H. HITCHCOCK,
Attorney for Plaintiff.

Copy received 11-28-45.

OGDEN & OGDEN,
Attorneys for Edward Doran.

[Endorsed]: Filed Nov. 29, 1945. [31]

[Title of District Court and Cause.]

MOTION TO DISMISS COUNT I AND
COUNT II OF AMENDED COMPLAINT

Comes now the defendant Edward Doran and without waiving his special appearance herein, and in the event of the Court's denial of defendant Doran's motion to quash said defendant moves against the amended complaint of the plaintiff as follows:

I.

To dismiss Count I thereof on the ground that said Count I does not state a cause of action against the defendant Doran, nor does it state facts sufficient to justify or warrant this Court in the issuance of a mandatory injunction, or any injunction at all, against the defendant Edward Doran; and on the further ground that it affirmatively appears in the allegations of Count I that no act or deed had been committed or performed by defendant Doran from and after December 22, 1944, effecting the subject matter alleged in said Count I, nor does any allegation appear in said Count I that the defendant Edward Doran has threatened to or intends to commit any act or deed concerning which a mandatory injunction or any injunction could be issued. [32]

II.

Defendant Doran moves to dismiss Count II thereof on the ground that said Count II does not

allege facts sufficient to constitute a cause of action against said defendant Doran, nor does it state facts sufficient to warrant the Court in granting any relief whatsoever to the plaintiff as respects the allegations of Count II; and on the further ground that there is no allegation in Count II which specifically alleges or points out the commission of any act or deed, or the omission of any act or deed, on the part of the defendant Doran, which would justify or warrant this Court in granting any relief whatsoever to the plaintiff as against the defendant Doran.

This motion is based upon the records and files in the above entitled cause.

OGDEN & OGDEN,
By RAYMOND D. OGDEN, JR.,
Attorneys for Defendant
Edward Doran.

Received copy Dec. 7/45.

ANDREW H. HITCHCOCK.

Received copy Dec. 7/45.

C. E. HUGHES,
Attorney.

[Endorsed]: Filed Dec. 8, 1945. [33]

[Title of District Court and Cause.]

ORDER ON MOTIONS OF GRANITE FALLS
PLANING MILL, A CORPORATION, M. H.
WYMAN AND EDWARD DORAN

This matter having come on duly and regularly to be heard on the motions of Granite Falls Planing Mill, a corporation, M. H. Wyman and Edward Doran, to quash the service of the summons and amended complaint in the above cause made on M. H. Wyman individually and as an officer of said corporation on November 9, 1945, and on Edward Doran November 20, 1945; on the grounds therein set forth; plaintiff appearing by his attorneys, Andrew H. Hitchcock and Frederick W. Post, defendants, Granite Falls Planing Mill, a corporation, and M. H. Wyman appearing specially by their attorney, C. E. Hughes, and Edward Doran appearing specially by his attorneys, Ogden and Ogden, and arguments having been heard for and against said motion, and this Court having considered said motions to quash as motions to dismiss;

It Is, Therefore, Ordered and Adjudged that Granite Falls Planing Mill, a corporation, defendant above named, be and it is hereby dismissed from said suit.

It is further Ordered and Adjudged that M. H. Wyman and Edward Doran, defendants above named, be and they are hereby dismissed [34] from said suit as individuals.

Done in Open Court this 15th day of February,
1946.

JOHN C. BOWEN,
District Judge.

Approved and presented by:

C. E. HUGHES,
Attorney for Granite Falls
Planing Mill, a corporation,
and M. H. Wyman.

Approved:

RAYMOND D. OGDEN, JR.,
Attorney for Edward Doran.

A. H. HITCHCOCK,
FREDERICK W. POST,
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 15, 1946. [35]

[Title of District Court and Cause.]

ORDER ON DEFENDANTS' MOTIONS
TO DISMISS

This matter having come on duly and regularly to be heard on motions of all the defendants above named to dismiss Counts I and II of plaintiff's amended complaint, plaintiff appearing by his attorneys, Andrew H. Hitchcock and Frederick W. Post, and Edward Doran appearing by his attorneys, Ogden and Ogden, and all the remaining defendants appearing by their attorney, C. E. Hughes,

and this Court having heard arguments for and against said motions made separately as to each of said Counts, and being duly advised in the premises;

It Is, Therefore, Ordered and Adjudged that said defendants' motions to dismiss Count I of plaintiff's amended complaint be and they are hereby denied.

It is further Ordered and Adjudged that said defendants' motion to dismiss Count II of plaintiff's amended complaint be and they are, hereby granted with leave to file a second amended complaint herein within two weeks.

Done in Open Court this 15th day of February, 1946.

JOHN C. BOWEN,
District Judge.

Approved and presented by:

/s/ C. E. HUGHES,

Attorney for Granite Falls
Planing Mill, a corporation,
and M. H. Wyman.

Approved as to form:

/s/ A. H. HITCHCOCK.

Approved by:

/s/ RAYMOND D. OGDEN, JR.,
Attorney for Edward Doran.

[Endorsed]: Filed Feb. 15, 1946. [36]

[Title of District Court and Cause.]

SECOND AMENDED COMPLAINT FOR AN
INJUNCTION AND TREBLE DAMAGES

Comes now plaintiff, above named, and for his causes of action against defendants, above named, alleges:

Count I.

1. That the Office of Price Administration is an agency of the Government of the United States of America, created by the provisions of Section 201(a) of the Emergency Price Control Act of 1942 (50 U.S.C.A. 901 et seq.), as amended, hereinafter referred to as the "Price Control Act," and that Chester Bowles, plaintiff herein, is the duly appointed, qualified and acting Administrator thereof.

2. That jurisdiction of this cause of action is conferred upon the above entitled court by the provisions of Section 205(c) of the Price Control Act, as amended.

3. That, the defendant, M. A. Wyman, doing business as the M. A. Wyman Lumber Company was, at all times, hereinafter mentioned, engaged in the business of buying and selling lumber with his principal place of business in King County within the jurisdiction of this court.

4. That the defendants, M. A. Wyman, M. H. Wyman and Edward Doran, a co-partnership, doing business as the Wyman Mill [37] Company,

were, at all times hereinafter mentioned, engaged in the business of producing West Coast rough softwood lumber with their principal place of business in Snohomish County within the jurisdiction of this court.

5. That, in the judgment of the said Administrator, the defendants from July 11, 1944, to and including December 22, 1944, were engaged in the acts and practices hereinafter described which constituted a violation of Revised Maximum Price Regulation 26 (10 Fed. Reg. 13050), as amended, hereinafter referred to as "RMPR 26" which was issued pursuant to Section 2(a), Section 202(b), and Section 201(d) of said Price Control Act, and that, therefore, pursuant to Section 205(a) of said Price Control Act the Administrator makes this application for an injunction to enforce compliance with said RMPR 26.

6. That, at all times mentioned herein RMPR 26 was in full force and effect fixing the maximum price that could be charged for Douglas fir, or other West Coast lumber to purchasers for use in the course of trade or business.

7. That, the defendants from July 11, 1944, to and including December 22, 1944, made numerous sales to purchasers for use or consumption in the course of trade or business of Douglas fir at prices in excess of the maximum prices fixed by RMPR 26. That said overcharges are fully set forth in Exhibit "A" which is affixed hereto and made a part hereof as fully as if set forth herein.

Count II.

1. Plaintiff incorporates herein and makes a part hereof as fully as if set forth herein Paragraphs 1, 2, 3 and 4 of Count I of this complaint.

2. That the defendant from July 11, 1944, to and including December 22, 1944, were engaged in the acts and practices [38] hereinafter described which constituted a violation of Revised Maximum Price Regulation 26 (10 Fed. Reg. 13050), as amended, hereinafter referred to as "RMPR 26," which was issued pursuant to Section 2(a), Section 202(b), and 201(d) of said Price Control Act, and that, therefore, pursuant to Section 205(e) of said Price Control Act the Administrator brings this action for treble damages.

3. That, at all times mentioned herein RMPR 26 was in full force and effect fixing the maximum price that could be charged for Douglas fir, or other West Coast lumber to purchasers for use in the course of trade or business.

4. That, the defendants, being sellers subject to the said regulation, made numerous sales from July 11, 1944, to and including December 22, 1944, to purchasers for use or consumption in the course of trade or business at prices in excess of the maximum prices fixed by the regulation, which sales are fully set forth in Exhibit "A" which is affixed hereto and made a part hereof by reference as fully as if set forth herein. That the amount by which

the prices charged by the defendants exceeds the maximum prices provided under RMPR 26 is \$19,130.89.

Wherefore plaintiff prays for:

1. A preliminary and final injunction against said defendants, their agents, employees, and any and all persons acting in concert or participation with said defendants:

A. Ordering and directing them forthwith to fix the prices of all Douglas fir or other West Coast lumber sold by them in accordance with the applicable provisions of Revised Maximum Price Regulation 26 (10 Fed. Reg. 13050).

B. Ordering and directing them to do every other act required to be done by said regulation, and to do every act required to be done by any other applicable regulation or order relating to prices, heretofore or hereafter issued pursuant to said Price Control Act, as amended, or extended.

C. Enjoining and restraining them permanently from doing any other act prohibited by said regulation and from doing any act prohibited by any other applicable regulation or order relating to prices, heretofore or hereafter issued pursuant to said Price Control Act, as amended or extended.

2. Judgment in favor of the plaintiff and against the defendants for three times the overcharges which sum is \$57,392.57.

3. And for such other and further relief as the court may deem just and equitable in the premises.

/s/ ANDREW H. HITCHCOCK,
Enforcement Attorney.

/s/ DANIEL M. REAUGH,
District Enforcement
Attorney,

Attorneys for Plaintiff.

[Attached exhibit is identical with Exhibit A as set out in full in Amended Complaint for Injunction and Treble Damages, and appears on pages 20 to 22.]

[Endorsed]: Filed Feb. 27, 1946.

District Court of the United States for the Western
District of Washington, Northern Division.

Civil Action File No. 1279

CHESTER BOWLES, Administrator,
Office of Price Administration,
Plaintiff,

vs.

M. A. WYMAN, d.b.a. M. A. Wyman Lumber
Company, et al.,
Defendants.

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon A. H. Hitchcock plaintiff's attorney, whose address 3319 White-Henry-Stuart Building, Seattle, Washington, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] MILLARD P. THOMAS,
Clerk of Court.

By /s/ SIGFRIED PETTYS,
Deputy Clerk.

Date: Feb. 27, 1946.

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the 27th day of February, 1946, I received the within summons, together with copy of Second Amended Complaint for Injunction and Treble Damages and that thereafter I served the same on the therein named M. W. Wyman and M. H. Wyman by handing to and leaving a true and correct copy thereof with each of them personally at Seattle, Washington on the 28th day of February, 1946 and I also served the same on the therein named Edward Doran by handing to and leaving a true and correct copy thereof with him personally at Darrington, Washington on the 5th day of March, 1946.

J. S. DENISE,

United States Marshal.

By /s/ J. M. SCHWERDFIELD,

Deputy United States Marshal.

Marshal's Fees: Travel \$18.96; Service \$6.00;
Total \$24.96.

[Endorsed]: Filed March 15, 1946.

[Title of District Court and Cause.]

MOTION TO QUASH SERVICE OF SUMMONS
AND SECOND AMENDED COMPLAINT
ON M. H. WYMAN OR TO DISMISS

Comes now M. H. Wyman, defendant above named, and appearing specially for the purpose of this motion and for no other purpose, respectfully moves this Court to quash the service of the summons and second amended complaint in the above cause made on said M. H. Wyman on February 28, 1946, or in the alternative to dismiss said M. H. Wyman with prejudice, on the ground that said M. H. Wyman was by formal order of this Court on February 15, 1946, dismissed from the above cause, and no appeal has been taken therefrom, and said order is now *res adjudicata*; and on the further ground set out in said defendant's motion to quash the service of the summons and amended complaint herein; and on the further ground that neither Count I or Count II of said second amended complaint alleges facts sufficient to state a claim on which relief can be granted against said M. H. Wyman; and on the further ground that this Court has no jurisdiction of the subject matter of this action or of the person of said defendant; and on the further ground that it affirmatively appears from the records herein that said second amended complaint was not served or filed within the time limited by law.

This motion is based upon the records and files in the above entitled case.

C. E. HUGHES,

Attorney for M. H. Wyman.

Copy recd. March 13, 1946

A. H. HITCHCOCK,

Attorney for Plaintiff.

Copy recd. March 13, 1946

OGDEN & OGDEN,

By RAYMOND D. OGDEN, Jr.,

Attorney for Edward Doran.

[Endorsed]: Filed March 18, 1946. [48]

[Title of District Court and Cause.]

MOTION TO QUASH SERVICE OF SUMMONS
AND SECOND AMENDED COMPLAINT
ON EDWARD DORAN OR TO DISMISS

Comes now Edward Doran, defendant above named, and appearing specially for the purpose of this motion and for no other purpose, respectfully moves this Court to quash the service of the summons and second amended complaint in the above cause made on said Edward Doran on February 28, 1946, or in the alternative to dismiss said Edward Doran with prejudice, on the ground that said Edward Doran was by formal order of this Court on February 15, 1946, dismissed from the above cause, and no appeal has been taken therefrom, and

said order is now *res adjudicata*; and on the further ground set out in said defendant's motion to quash the service of the summons and amended complaint herein; and on the further ground that neither Count I or Count II of said second amended complaint alleges facts sufficient to state a claim on which relief can be granted against the said Edward Doran; and on the further ground that this Court has no jurisdiction of the subject matter of this action or of the person of said defendant; and on the further ground that it affirmatively appears from the records herein that said second amended complaint was not served or filed within the time limited by law.

This Motion is based upon the record and files in the above entitled case.

OGDEN & OGDEN,
/s/ RAYMOND D. OGDEN, Jr.,
Attorneys for Defendant,
Edward Doran [49]

Copy Recd. 3/22/46

C. E. HUGHES,
By E. L. L.

Copy Received 3/22/46

A. H. HITCHCOCK

[Endorsed]: Filed March 22, 1946. [50]

[Title of District Court and Cause.]

MOTION TO DISMISS COUNTS I AND II OF
THE SECOND AMENDED COMPLAINT

Come now M. A. Wyman and M. H. Wyman, both appearing specially for the purpose of this motion and for no other purpose, and each separately moves against plaintiff's second amended complaint as follows:

1. To dismiss Count I thereof, on the ground that said Count does not allege facts sufficient to warrant any need or justification for the issuance of a mandatory injunction or any other injunction against said defendants or either of them, nor state a claim upon which relief can be granted; and on the further ground that it affirmatively appears from second amended complaint that none of said defendants are now, or have at any time since December 22, 1944, violated any regulation, or that said defendants or any of them are now or have at any time since December 22, 1944, threatened to do so, or that plaintiff expects or fears that said defendants will do so in the future; and on the further ground that said Count I of the second amended complaint constitutes a new and different cause of action, that is to say Count I of the original and amended complaints were based solely on an alleged violation of Maximum Price Regulation 539, governing the price of services, while Count I of the second amended complaint filed herein [51] Feb-

ruary 27, 1946, is based solely on an alleged violation of Revised Maximum Price Regulation 26, governing the price of commodities; and on the further ground that said second amended complaint was not served or filed within the time limited by law; and on the further ground that this Court has no jurisdiction of the subject matter of this action or of the person of said defendants, or either of them.

2. To dismiss Count II thereof on the ground that said Count does not allege facts sufficient to constitute a cause of action against said defendants, or either of them, nor state a claim upon which relief can be granted; and on the further ground that Count II of said second amended complaint constitutes a new and different cause of action, that is to say Count II of the original and amended complaints were based solely on an alleged violation of Maximum Price Regulation 539, governing the price of services, while Count II of the second amended complaint filed herein February 27, 1946, is based solely on an alleged violation of Revised Maximum Price Regulation 26, governing the price of commodities; and on the further ground that said second amended complaint was not filed or served within the time limited by law, and in addition thereto it was filed after Count II of said amended complaint was dismissed for failure to state any claim upon which relief could be granted; and on the further ground that this Court has no jurisdiction of the subject matter of this action, or of the person of said defendants or either of them.

These motions are made separately by said M. A. Wyman and M. H. Wyman, and are based upon the records and files in the above cause.

C. E. HUGHES,
Attorney for M. A. Wyman and
M. H. Wyman [52]

Copy received March 15, 1946

A. H. HITCHCOCK,
Attorney for Plaintiff.

Copy Received March 13, 1946

OGDEN & OGDEN,
By RAYMOND D. OGDEN, Jr.,
Attorneys for Edward Doran.

[Endorsed]: Filed March 18, 1946. [53]

[Title of District Court and Cause.]

MOTION TO DISMISS COUNTS I AND II OF
THE SECOND AMENDED COMPLAINT

Comes Now Edward Doran, defendant above named, and appearing specially for the purpose of this motion and for no other purpose, and moves against plaintiff's second amended complaint as follows:

1. To dismiss Count I thereof, on the ground that said count does not allege facts sufficient to warrant any need for justification for the issuance of a mandatory injunction or any other injunction

against said defendant, nor state a claim upon which relief can be granted; and on the further ground that it affirmatively appears from said second amended complaint that said defendant is not now, or has he at any time since December 22, 1944, violated any regulation, or that said defendant is now or has at any time since December 22, 1944, threatened to do so, or that plaintiff expects or fears that said defendant will do so in the future; and on the further ground that said Count I of the second amended complaint constitutes a new and different cause of action, that is to say, Count I of the original and amended complaints were based solely on an alleged violation of Maximum Price Regulation 539, governing the price of services, while Count I of the second amended complaint filed herein February 27, 1946, is based solely on an alleged violation of Revised Maximum Price Regulation 26, governing the price of commodities; and on the further [54] ground that said second amended complaint was not served or filed within the time limited by law; and on the further ground that this Court has no jurisdiction of the subject matter of this action or of the person of said defendant.

2. To dismiss Count II thereof on the ground that said Count does not allege facts sufficient to constitute a cause of action against said defendant, nor to state a claim upon which relief can be granted; and on the further ground that Count II of said second amended complaint constitutes a new

and different cause of action, that is to say, Count II of the original and amended complaints were based solely on an alleged violation of Maximum Price Regulation 539, governing the price of services, while Count II of the second amended complaint filed herein February 27, 1946, is based solely on an alleged violatoin of Revised Maximum Price Regulation 26, governing the price of commodities; and on the further ground that said second amended complaint was not filed or served within the time limited by law, and in addition thereto it was filed after Count II of said amended complaint was dismissed for failure to state any claim upon which relief could be granted; and on the further ground that this Court has no jurisdiction of the subject matter of this action, or of the person of said defendant.

This Motion is based upon the records and files in the above cause.

OGDEN & OGDEN,
/s/ RAYMOND D. OGDEN, Jr.,
Attorneys for defendant,
Edward Doran.

Copy received 3/24/46

A. H. HITCHCOCK

Copy received 3/22/46

C. E. HUGHES,
by E. L. L.

[Endorsed]: Filed March 22, 1946. [55]

[Title of District Court and Cause.]

ORDER FOR SUBSTITUTION

This matter having come on regularly for hearing this day before the undersigned, one of the Judges of the above-entitled court, and it appearing to the court that Chester Bowles, plaintiff, a party in this action, has resigned from the office of Price Administrator, of the Office of Price Administration, effective February 29, 1946; that his resignation was duly accepted and that said Paul A. Porter entered upon the duties of said office on February 26, 1946, and is now lawfully acting as Administrator of the Office of Price Administration; that there is substantial need of continuing and maintaining this cause by him as successor in office to Chester Bowles as Administrator of the Office of Price Administration for the reason that this action relates to the present and future discharge of the office of Administrator of the Office of Price Administration and is important in the administration and enforcement of the Emergency Price Control Act; that good and sufficient notice of the plaintiff's motion for substitution has been given to all interested parties, and the court being fully advised in the premises, now therefore it is

Ordered that Paul A. Porter, Administrator of the Office of Price Administration, is substituted as

plaintiff in this action in the place and stead of
Chester Bowles.

Done In Open Court this 30th day of March,
1946.

JOHN C. BOWEN,
Judge.

Presented by:

JOE S. PEARSON.

[Endorsed]: Filed March 30, 1946. [56]

[Title of District Court and Cause.]

ORDER ON MOTIONS OF M. H. WYMAN AND
EDWARD DORAN TO QUASH SERVICE
OF SUMMONS AND SECOND AMENDED
COMPLAINT

This matter having come on duly and regularly
to be heard on motions of M. H. Wyman and
Edward Doran to Quash Service of Summons and
Second Amended Complaint in the above cause,
made on February 28, 1946, on the ground that said
service was made on M. H. Wyman and Edward
Doran in their individual capacity, plaintiff appear-
ing by his Attorneys, Andrew H. Hitchcock and
James W. Porter; and M. H. Wyman appearing
specially by his Attorney, C. E. Hughes; and
Edward Doran appearing specially by his Attor-
neys, Ogden & Ogden; and the Court having heard
the statement of plaintiff's Attorney that there was
no intention on the part of the plaintiff to serve

M. H. Wyman and Edward Doran in their individual capacity but rather that they were joined as members of a co-partnership, and for no other purpose, and argument having been heard for and against said motions, and this Court being duly advised in the premises;

It Is Therefore Ordered and Adjudged: [57]

That the Motions of M. H. Wyman and Edward Doran to Quash the Service of the Summons and Second Amended Complaint as to them in their individual capacity in the above cause be, and they are, hereby granted. Exception allowed defendants.

Done In Open Court this 12th day of August, 1946.

JOHN C. BOWEN,

United States District Judge.

Approved and presented by:

ANDREW H. HITCHCOCK.

JAMES W. PORTER,

Attorneys for Plaintiff.

Approved:

.....

Attorney for M. H. Wyman.

.....

Attorneys for Edward Doran.

Copy received 8/12/46.

C. E. HUGHES,

Attorney for M. H. Wyman.

Copy received 8/12/46.

RAYMOND D. OGDEN, JR.,

Attorney for Edward Doran.

[Endorsed]: Filed Aug. 12, 1946. [58]

[Title of District Court and Cause.]

ORDER ON DEFENDANTS' MOTIONS TO
DISMISS COUNTS I AND II OF THE
SECOND AMENDED COMPLAINT

This matter having come on duly and regularly to be heard on the motions of M. A. Wyman, M. H. Wyman and Edward Doran, all appearing specially for the purpose of said Motions and for no other purpose, Plaintiff appearing by his attorneys, Andrew H. Hitchcock and James W. Porter; M. A. Wyman and M. H. Wyman appearing specially herein by their attorney, C. E. Hughes; and Edward Doran appearing specially by his attorneys, Ogden & Ogden, and this Court having heard argument for and against said Motions made separately as to each of said Defendants, and being duly advised in the premises;

It Is, Therefore, Ordered and Adjudged that said Motions of M. A. Wyman to dismiss Counts I and II of Plaintiff's Second Amended Complaint be, and they are, hereby denied without prejudice, however, to renew said Motions at the end of trial.

It is therefore Ordered and Adjudged that the Motions of M. H. Wyman and Edward Doran, Defendants above-named, to dismiss Counts I and II of Plaintiff's Second Amended Complaint on file herein be, and each of said Motions is, [59] hereby denied insofar as their partnership liability is concerned, but said motion to dismiss Counts I and II

so far as concerns any and all other liability other than partnership liability of defendants M. H. Wyman and Edward Doran is granted.

Done In Open Court this 12th day of August, 1946.

JOHN C. BOWEN,
District Judge.

Approved and presented by:

ANDREW H. HITCHCOCK,
Attorney for Plaintiff.

Copy received:

OGDEN & OGDEN,
By RAYMOND D. OGDEN, JR.,
Attorneys for Edward Doran.

C. E. HUGHES ,
By E. L. L.,
Attorney for M. A. Wyman
& M. H. Wyman.

[Endorsed]: Filed Aug. 12, 1946. [60]

[Title of District Court and Cause.]

ANSWER OF M. A. WYMAN TO SECOND
AMENDED COMPLAINT

Comes now M. A. Wyman, defendant above-named, individually and in his various capacities mentioned above, without waiving his special appearance herein, and for Answer to Count I of Plaintiff's Second Amended Complaint, denies paragraphs 2, 5, 6 and 7 thereof, and each and every allegation therein contained.

II.

For Answer to Count II of Plaintiff's Second Amended Complaint, said defendant denies Paragraphs 1, 2, 3 and 4 thereof, and each and every allegation contained therein.

For a First Further and Separate Answer and Affirmative Defense to Plaintiff's Second Amended Complaint, and the Whole Thereof, said Defendant Alleges:

I.

That neither Count I nor Count II thereof states a claim against defendant, M. A. Wyman, upon which relief can be granted.

For a Second Further and Separate Answer and Affirmative Defense to Plaintiff's Second Amended Complaint, and the Whole Thereof, said Defendant Alleges:

I.

That the alleged rights of action set forth in Counts I [61] and II thereof introduce new and different causes of action, filed after the expiration of the one year statute of limitations provided in Section 205 of the Emergency Price Control Act of 1942, as amended, and that said new and different causes of action were not commenced within the statutory period required by said Act.

For a Third Further and Separate Answer and Affirmative Defense to Plaintiff's Second Amended Complaint, and the Whole Thereof, said Defendant Alleges:

I.

That if any violations of Revised Maximum Price Regulation No. 26 have occurred, as alleged in plaintiff's Second Amended Complaint, they were neither wilfull nor the result of failure by said defendant to take practicable precautions against the occurrence of such alleged violations.

Wherefore, having fully answered plaintiff's Second Amended Complaint, defendant M. A. Wyman prays that this action be dismissed with prejudice.

C. E. HUGHES,

Attorney for M. A. Wyman.

Copy received 8/16/46.

JAMES W. PORTER,

Attorney for Plaintiff.

[Endorsed]: Filed Aug. 16, 1946. [62]

[Title of District Court and Cause.]

SPECIAL APPEARANCE OF
EDWARD DORAN

Comes now Edward Doran, not in his individual capacity at all, but as a former member of the partnership named herein as one of the defendants, and appears herein specially and not otherwise, as such former member of such partnership, and without waiving his special appearance herein, represents to the Court as follows:

I.

That heretofore, on the 12th day of August, 1946, upon motion of Edward Doran, as an individual, Counts I and II of plaintiff's Second Amended

Complaint were dismissed insofar as any and all liability against him personally was concerned, other than partnership liability.

II.

That on the 12th day of August, 1946, one of the judges of the above-entitled court entered an order quashing the service of Summons and Second Amended Complaint on said Edward Doran insofar as his individual capacity in the above-entitled cause be.

III.

That said Edward Doran alleges that in view of the orders heretofore referred to in Paragraphs I and II hereof, this Court is now without jurisdiction to enter any order or judgment against Edward Doran in any capacity whatsoever.

Wherefore, Edward Doran, still maintaining his special [63] appearance and without submitting himself to the jurisdiction of this Court, prays that the plaintiff take nothing by its cause of action herein against Edward Doran personally, or against Edward Doran as a member of said partnership, or at all.

OGDEN & OGDEN,

By RAYMOND D. OGDEN, JR.,

Attorneys for Edward Doran.

Copy received 8/16/46.

C. E. HUGHES,

Attorney for M. A. Wyman.

Copy received 8/16/46.

JAMES W. PORTER,

Attorney for Plaintiff.

[Endorsed]: Filed Aug. 16, 1946. [64]

[Title of District Court and Cause.]

STIPULATION

The parties hereto by their respective attorneys being desirous of saving the time of this Court with respect to certain matters of fact which are undisputed, desire to stipulate and agree as to the following facts, subject to objection by any party as to materiality or admissibility.

Now Therefore It Is Stipulated And Agreed That:

1. None of the defendants have violated any OPA regulations since December 22, 1944, to the best of the plaintiff's present knowledge.

2. Count II of plaintiff's Second Amended Complaint is an action for treble damages or for a penalty by a civil suit or proceeding.

3. Maximum Price Regulation 539 is a service regulation covering maximum prices for surfacing and kiln drying of lumber. And Revised Maximum Price Regulation 26 is a commodity regulation establishing maximum prices for the sale of a species of lumber known as Douglas Fir and other West Coast lumber.

4. Plaintiff's Amended Complaint was dismissed by order of this Court on February 15, 1946, with leave to amend within two weeks. His Second Amended Complaint was filed on February 27, 1946, within the time allowed for filing under [65] said order. The last alleged violation named in both of these Complaints, took place December 22, 1944. The Statute of Limitations set forth in

Section 205(e) of the Emergency Price Control Act of 1942, as amended, provides that action must be instituted within one year from the date of the last violation.

5. M. A. Wyman was the principal owner and manager of the M. A. Wyman Lumber Company, White-Henry-Stuart Building, Seattle, Washington, from July 10, 1944, to and including, December 22, 1944.

6. M. A. Wyman, M. H. Wyman and Edward Doran, as co-partners, were operating the Wyman Mill Company, located at Granite Falls, Washington, for the above-mentioned period.

7. M. A. Wyman during the period mentioned in paragraph 5, hereof, was ~~the principal~~ a 50% stockholder and president of the Granite Falls Planing Mill, a corporation, with its operation located near Granite Falls, and said corporation had a representative in the office of the Wyman Lumber Company in Seattle, Washington. That the M. A. Wyman, mentioned in Paragraphs 5 and 6, hereof and also as president of the Granite Falls Planing Mills, is one and the same person.

8. That Granite Falls Planing Mill during 1944 was located within 500 feet of the Wyman Mill Company.

9. That Edward Doran was superintendent of the Wyman Mill Company and the Granite Falls Planing Mill during 1944.

10. That the Granite Falls Planing Mill bought the surfacing machinery from the Wyman Mill Company, and also occupied space which prior to

its incorporation had been occupied by a portion of the Wyman Mill Company.

11. The M. A. Wyman Lumber Company sold, shipped, invoiced and received payment for 3,122,732 feet board measure of rough lumber from July 10, 1944, to and including December 22, 1944. That these figures were obtained from invoices, the [66] originals of which are now within the possession of the defendants, herein, and which footage is further shown in Exhibit "A" appended to plaintiff's Second Amended Complaint. That it received payment for this lumber in the sum of \$89,427.38. That said latter sum is in accordance with the prices set forth in RMPR 26.

12. The Granite Falls Planing Mill invoiced and received payment in the sum of \$22,955.44 for surfacing charges on 3,122,732 feet board measure of lumber from July 10, 1944, to and including December 22, 1944, being the same lumber mentioned in paragraph 11. That these figures were obtained from invoices made out in the offices of the M. A. Wyman Lumber Company, White-Henry-Stuart Building, Seattle, Washington, the originals of which are now in the possession of the defendants herein, and which footage is further shown in Exhibit "A" appended to plaintiff's Second Amended Complaint.

13. During this period with respect to all of these shipments heretofore mentioned, a representative of the Granite Falls Planing Mill, using the office of the Wyman Lumber Company, made out the Bills of Lading for the surfaced lumber pro-

viding for shipment of said lumber from the Granite Falls Planing Mill to the various customers, showing the M. A. Wyman Lumber Company as shipper. That such procedure was customary at said time.

14. The invoices for rough lumber, the invoices for surfacing, and the Bills of Lading all bear the same date for each shipment, and the footage for the rough and surfaced lumber is the same in each case.

15. All sales concerned in this suit were made to purchasers who operated retail or wholesale lumber yards and were for use in the course of said purchasers' business. [67]

In Witness Whereof, the undersigned have caused their hands to be affixed this 24th day of September, 1946, at the City of Seattle, Washington.

ANDREW H. HITCHCOCK,
JAMES W. PORTER,
Attorneys for Plaintiff.

By
Defendant.

/s/ C. E. HUGES,
Attorney for Defendant.

[Endorsed]: Filed Sept. 26, 1946. [68]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial in the above-entitled Court sitting without a jury, Honorable Howard C. Speakman, U. S. District Court Judge, presiding, and Andrew H. Hitchcock and James W. Porter appearing for the Plaintiff, and C. E. Hughes, George Laymen and Ogden & Ogden appearing for the defendants, and said action having been tried on September 26, 27, and 28, 1946, and evidence both oral and documentary having been introduced, and said action having been submitted for decision, the Court being fully advised, now makes its Findings of Fact as follows:

FINDINGS OF FACT

I.

That the Office of Price Administration is an agency of the Government of the United States of America, created by the provisions of Section 201(a) of the Emergency Price Control Act of 1942 (50 U.S.C.A. 901 et seq.), as amended, and that Paul A. Porter, plaintiff herein, is the duly appointed, qualified and acting Administrator thereof.

II.

That jurisdiction of this cause of action is conferred upon [69] the above-entitled Court by the

provisions of Section 205(c) of the Price Control Act, as amended.

III.

That the defendant, M. A. Wyman, doing business as the M. A. Wyman Lumber Company, was at all times material to this suit, engaged in the business of buying and selling lumber with his principal place of business in the White-Henry-Stuart Building, in King County, within the jurisdiction of this Court.

IV.

That the defendants, M. A. Wyman, M. H. Wyman and Edward Doran, a co-partnership doing business as the Wyman Mill Company, were at all times material to this case, engaged in the business of producing Douglas Fir and other West Coast soft wood lumber, with their principal place of business Snohomish County, within the jurisdiction of this Court.

V.

For all periods involved herein, Revised Maximum Price Regulation 26 established the maximum prices that could be charged for Douglas Fir or other West Coast surfaced lumber to purchasers for use or consumption in the course of trade or business. These prices were set forth in the Price Tables under Article V of said Regulation.

VI.

Defendants made numerous sales of Douglas Fir and other West Coast surfaced lumber between

July 11, 1944, to and including December 22, 1944, to purchasers for use or consumption in the course of trade or business at prices in excess of the maximum prices fixed by the Price Tables under Article V of RMPR 26.

VII.

The total footage sold by the defendants was 3,122,732 feet board measure. [70]

VIII.

That the defendants incorporated a company, the Granite Falls Planing Mill, in January 1944, which company authorized the issuance of 240 shares of capital stock, and this capital stock was owned from July to December, 1944, as follows:

M. A. Wyman	120 shares
M. H. Wyman	60 shares
Edward Doran	60 shares

IX.

For the period involved herein, M. A. Wyman was president of the said Granite Falls Planing Mill. This Planing Mill was operated at Granite Falls, Washington, within ~~500~~ 1000 feet of the Wyman Mill Company, and said Granite Falls Planing Mill bought its surfacing machinery and the space it occupied from the Wyman Mill Company.

X.

That Edward Doran was the Superintendent of

both the Wyman Mill Company and the Granite Falls Planing Mill during this period.

XI.

That said Granite Falls Planing Mill, on May 3, 1944, made application directed to the Regional Office of the Office of Price Administration, at Seattle, for authorization to operate as a custom mill under the provisions of Supplementary Service Regulation 27 to Maximum Price Regulation 165. This application contained no information about the ownership of the Granite Falls Planing Mill.

XII.

Maximum Price Regulation 539 replaced Supplementary Service Regulation 27 to Maximum Price Regulation 165 on or about June 5, 1944. The Granite Falls Planing Mill never filed any other application for permission to charge custom milling prices pursuant to the provisions of Maximum Price Regulation 539.

XIII.

The application of the Granite Falls Planing Mill hereinbefore [71] mentioned was finally denied and returned to the Granite Falls Planing Mill by said Office of Price Administration on May 5, 1945. This was the first notice to said Granite Falls Planing Mill of its denial.

XIV.

The total amount of overcharges made by the defendants on the sales of surfaced Douglas Fir and other West Coast lumber for use or consumption in the course of trade or business for the period commencing July 11, 1944, to and including December 22, 1944, aggregated the total sum of \$19,130.67.

XV.

The overcharges made by the defendants on the sales referred to herein were not wilfull, and the defendants took reasonable precautions to avoid their occurrence.

XVI.

That the Granite Falls Planing Mill from July to December, 1944, as to its stockholders and officers, was composed of the same people who at that time owned the Wyman Mill Company and the M. A. Wyman Lumber Company. The Granite Falls Planing Mill was used for the purpose of securing prices in excess of the prices permitted the defendants by the provisions of the Pricing Tables under Article V of Revised Maximum Price Regulation 26.

XVII.

That the defendants above-named have not violated nor threatened to violate Revised Maximum Price Regulation 26 or Maximum Price Regulation 539 since December 22, 1944, nor has plaintiff since that date had any reason to believe that any of said defendants would violate either of said regulations.

CONCLUSIONS OF LAW

As Conclusions of Law from the foregoing facts, the Court finds that:

I.

That the defendants are entitled to have Count I of Plaintiff's Second Amended Complaint dismissed.

II.

Plaintiff is entitled to judgment against the defendants and each of them in the sum of \$19,130.67 and his costs herein.

III.

That this Court shall retain jurisdiction of this action for any appropriate proceedings. Judgment is hereby ordered to be entered accordingly.

Dated this 1st day of October, 1946.

HOWARD C. SPEAKMAN,
United States District Court
Judge.

Receipt of a copy of the within and foregoing Proposed Findings of Fact and Conclusions of Law is acknowledged this 1st day of October, 1946, 10.09 a.m.

C. E. HUGHES,
Attorney for Defendant.

OGDEN & OGDEN,
Attorney for Defendant
Edward Doran.

[Endorsed]: Filed Oct. 1, 1946. [73]

In the District Court of the United States for
the Western District of Washington, Northern
Division

Civil Action No. 1279

PAUL A. PORTER, Administrator, Office of
Price Administration,

Plaintiff,

vs.

M. A. WYMAN, d/b/a M. A. WYMAN LUMBER
COMPANY, et al.,

Defendants.

JUDGMENT

Plaintiff having filed herein a Complaint for treble damages, and an injunction, pursuant to Sections 205(a) and (e) of the Emergency Price Control Act of 1942, as amended, and defendant having appeared herein, the case having been tried to the Court, evidence having been taken on behalf of both parties, the Court having examined the files, heard the statements of counsel, and being fully advised in the premises,

It Is Hereby Ordered, Adjudged and Decreed, that:

I.

That Count I of plaintiff's Second Amended Complaint be, and the same is, hereby dismissed.

II.

Judgment be hereby entered in favor of the plaintiff and against the defendants and each of them for the sum of \$19,130.67 and for his costs herein.

Done In Open Court this 1st day of October, 1946.

HOWARD C. SPEAKMAN,
U. S. District Court Judge.

ANDREW H. HITCHCOCK,
JAMES W. PORTER,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 1, 1946. [74]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Comes now the defendant Edward Doran, and still reserving his special appearance, respectfully moves this Honorable Court for a new trial under Rule 59, Federal Rules of Civil Procedure, and Local Rule 48, on the following grounds:

I.

Insufficiency of the evidence to justify the Findings of Fact and Conclusions of Law as respects the defendant, Edward Doran, in this, that the evidence fails to connect Edward Doran personally with any violations of Revised Maximum Price Regulation 26 or Maximum Price Regulation 539.

II.

Errors of law occurring at the trial as follows:

The Court erred in entering any judgment against defendant Edward Doran on the ground and for the reason that the said Edward Doran was not a party to the within entitled cause in that he had been specifically dismissed from said cause of action; that on the 15th day of February, 1946, the Honorable John Bowen entered a final order in this cause, reciting among other things, "It is further ordered and adjudged that M. H. Wyman and Edward Doran, defendants above-named, be and they are hereby dismissed from said suit as individuals." Again on the 12th day of August, 1946, the Honorable John Bowen entered a final order and judgment as respects Edward Doran, in the within entitled cause, which order and judgment recites among other things [76] as follows: "That the motions of M. H. Wyman and Edward Doran to quash the service of the Summons and Second Amended Complaint, as to them in their individual capacity, in the above-entitled cause, be and the same are hereby granted;" that in spite of these orders, from which no appeal has been perfected, this Court did enter a judgment reading as follows: "Judgment is hereby entered in favor of the plaintiff and against the defendants, and each of them, for the sum of \$19,130.67 and for his costs herein." That in so doing this Court acted beyond its legal power as respects Edward Doran, and that the entering of a personal judgment against Edward

Doran when the Court had no jurisdiction over him, and he had been specifically dismissed from the cause, constitutes error of law, and such error should be immediately remedied.

This Motion is based upon the records and files in the within entitled cause.

OGDEN & OGDEN,
Attorneys for Defendant
Edward Doran.

Copy received 10/9/46.

C. E. HUGHES,
By E. L. L.

Service accepted 10/9/46.

L. M. PECK.

[Endorsed]: Filed Oct. 9, 1946. [77]

[Title of District Court and Cause.]

AMENDED MOTION FOR NEW TRIAL

Come now defendants above-named, except Edward Doran, and respectfully move this Court for a new trial under Rule 59, Federal Rules of Civil Procedure, and Local Rule 48, on the following grounds:

1. Insufficiency of the evidence to justify the findings, conclusions or judgment. The particulars wherein the evidence is claimed to be insufficient are as follows:

(a) The evidence fails to show that defendants sold any surfaced lumber to any of the alleged buyers between July 11 and December 22, 1944, or that they sold any lumber whatsoever to any of the alleged buyers except rough green lumber.

(b) The evidence fails to show any violation of Revised Maximum Price Regulation 26.

(c) The evidence fails to connect M. A. Wyman with any violation of Revised Maximum Price Regulation 26 or Maximum Price Regulation 539.

(d) The evidence fails to show that Granite Falls Planing Mill, a corporation, was used by the defendants, or any of them, for the purpose of securing prices in excess of RMPR 26 or any other regulation. [78]

(e) The evidence shows an application was made by Granite Falls Planing Mill, a corporation, in good faith on May 3, 1944, addressed to the Regional Office of Price Administration at Seattle, Washington, to operate under MPR 165, supplemental Service Regulation 27, effective May 3, 1944, which regulation was supplanted by MPR 539, effective June 5, 1944. That said application was received and filed by the Office of Price Administration at Seattle May 4, 1944, but said O.P.A. took no action thereon until May 5, 1945, at which time said O.P.A. returned said application to said applicant accompanied by a letter from said O.P.A. notifying said applicant for the first time that said application did not meet the requirements of MPR 539. That said delay and neglect by said O.P.A.

amounts to an estoppel to complain of any violations that may have occurred in the meantime.

2. Errors in law occurring at the trial as follows:

(a) Both the original complaint filed herein July 11, 1945, and the first amended complaint filed herein November 7, 1945, sought recovery for violation of MPR 539, a service regulation. The second amended complaint was filed herein and summons was issued thereon February 27, 1946, after the expiration of the one-year statute of limitations as provided in Sec. 205(e) of the Emergency Price Control Act of 1942 as amended, seeking recovery for violation of RMP 26, a commodity regulation, which amendment constituted a change in the cause of action after the expiration of the statute of limitations, and plaintiff's attempt at trial to show fraud or deceit over defendants' objection further changed the cause of action after the one year statute of limitations had run.

(b) In holding M. A. Wyman personally liable for the acts of Granite Falls Planing Mill, a corporation, merely because he was president thereof, when the evidence showed that he had nothing to do with the prices charged by said corporation or its business activities. [79]

(c) In holding M. H. Wyman and Edward Doran liable in any capacity after they were both dismissed by formal order of this Court.

(d) In permitting any evidence over defendants' objection tending to establish fraud or deceit when none was alleged.

(e) In admitting evidence over defendants' objection as to the operation, ownership or organization of Granite Falls Planing Mill, a corporation, after it had been dismissed as defendant herein by formal order of this Court February 15, 1946.

This motion is made separately as to each of the above grounds and is based upon the three complaints of plaintiff and the answers to the second amended complaint and the stipulation on file herein and the evidence at the trial of this cause.

C. E. HUGHES,

Attorney for Defendants.

Copy received Oct. 7, 1946.

JAMES W. PORTER,

Attorney for Plaintiff.

Copy received Oct. 7, 1946.

OGDEN & OGDEN,

Attorneys for Edward Doran.

[Endorsed]: Filed Oct. 7, 1946. [80]

United States District Court
District of Arizona
Judge's Chambers
Tucson, Arizona

June 19, 1947

Mr. Millard P. Thomas, Clerk
United States District Court
Western District of Washington
P. O. Box 1866
Seattle 11, Washington

Re: No. 1279, Paul A. Porter, etc., v.
M. A. Wyman, etc., et al.

Dear Mr. Thomas:

Please enter an order on the minutes denying all motions for new trial in the above entitled case.

The file is being returned to you under separate cover.

Very truly yours,

HOWARD C. SPEAKMAN.

[Endorsed]: Filed in the United States District Court, Western District of Washington, Northern Division, June 23, 1947. Millard P. Thomas, Clerk; by Truman Egger, Deputy. [81]

United States District Court, Western District of
Washington, Northern Division

Civil No. 1279

PAUL A. PORTER, Administrator, Office of Price
Administration,

Plaintiff,

vs.

M. A. WYMAN, doing business as M. A. Wyman
Lumber Company, et al.,

Defendants.

ORDER DENYING MOTIONS FOR
NEW TRIAL

The Court having fully considered the motions for a new trial interposed by each of the defendants herein, and the elaborate briefs submitted by the parties, and being fully advised in the premises and having heretofore directed the Clerk to make a docket entry denying said motions and each thereof, it is now

Ordered that said motions for a new trial be and each thereof is hereby denied.

Dated this 24th day of June, 1947.

HOWARD C. SPEAKMAN,
United States District Judge.

Presented by:

JOHN E. BELCHER,
Assistant United States
Attorney.

Approved as to form:

C. E. HUGHES,
Attorney for defendant
M. A. Wyman.

OGDEN & OGDEN,
Attorneys for defendant
Edward Doran.

[Endorsed]: Filed July 7, 1947. [82]

[Title of District Court and Cause.]

AUTHORIZATION

I, Howard C. Speakman, United States District Judge for the State of Arizona, before whom the above entitled cause was tried at Seattle, Washington, do hereby authorize the Honorable John C. Bowen or the Honorable Lloyd Black, both United States District Judges for the Western District of Washington, to approve appeal bond and supersedeas bond on appeal in the above cause in the total sum of \$20,250.00 and to sign such other orders in the above cause as either of them may deem

proper or necessary, in order to perfect an appeal of said cause to the United States Circuit Court of Appeals for the Ninth Circuit.

HOWARD C. SPEAKMAN,
United States District Judge
for the State of Arizona.

[Endorsed]: Filed July 7, 1947. [83]

[Title of District Court and Cause.]

ORDER APPROVING WITHDRAWAL AND
SUBSTITUTION OF COUNSEL

This Matter having come on regularly to be heard on the ex parte application of Ogden & Ogden, attorneys for Edward Doran, one of the above named defendants seeking an order approving the withdrawal and substitution of themselves as counsel for Edward Doran on appeal; and it appearing to the court that C. E. Hughes has been through the entire proceedings of this case and now is counsel for all of the other defendants in the above cause; and it further appearing to the court that it is the desire of Edward Doran to have said C. E. Hughes act as his counsel in place and stead of Ogden & Ogden in the appeal of this case to the Circuit Court of Appeals, Ninth Circuit; and it further appearing to the court that Ogden & Ogden are desirous of withdrawing as attorneys for Edward Doran in the appeal of this case to the Circuit Court of Appeals, Ninth Circuit,

Now, Therefore, it is Ordered that Ogden & Ogden are hereby permitted to withdraw as attorneys of record for Edward Doran, one of the defendants named in the above entitled cause on appeal; and

It is further Ordered that C. E. Hughes may be substituted to act as counsel for Edward Doran, one of the defendants named in the above entitled cause on appeal in place and stead of Ogden & Ogden.

Done in Open Court this 8th day of July, 1947.

LLOYD L. BLACK,
United States District Judge.

Presented by:

/s/ RAYMOND D. OGDEN, JR.,
Of Ogden & Ogden, attorneys
for Edward Doran, one of
the above named
Defendants.

Approved:

/s/ C. E. HUGHES,
Attorney for remaining
Defendants.

Approved as to form:

/s/ JOHN E. BELCHER,
Attorney for Plaintiff.

[Endorsed]: Filed July 8, 1947. [84]

[Title of District Court and Cause.]

WITHDRAWAL OF ATTORNEYS

Comes now Ogden & Ogden and hereby withdraws as counsel on appeal for Edward Doran, one of the defendants above named in the above entitled cause.

OGDEN & OGDEN,
/s/ RAYMOND D. OGDEN, SR.,
/s/ RAYMOND D. OGDEN, JR.

Copy received July 8, 1947.

C. E. HUGHES,
Attorney for all Defendants
except Edward Doran.

JOHN E. BELCHER,
Assistant U. S. Attorney.

[Endorsed]: Filed July 8, 1947. [85]

[Title of District Court and Cause.]

SUBSTITUTION OF ATTORNEYS

The undersigned hereby appears as attorney of record for Edward Doran, defendant above named, without waiving the special appearance filed herein by said defendant.

C. E. HUGHES,
Attorney for Edward Doran.
1026 Henry Building,
Seattle, Washington.

Received a true copy this 9th day of June, 1947.

JOHN E. BELCHER,
Assistant U. S. Attorney.

[Endorsed]: Filed July 9, 1947. [86]

[Title of District Court and Cause.]

ORDER FOR SUBSTITUTION OF
PARTY PLAINTIFF

This Matter came on regularly before the Court pursuant to due notice, upon the motion of the United States Attorney for an order substituting the United States of America as party plaintiff in the place and stead of Paul A. Porter, the plaintiff being represented by J. Charles Dennis, United States Attorney, and John E. Belcher, Assistant United States Attorney, and the defendant being represented by C. E. Hughes, the Court having heard the argument of respective counsel and being fully informed, it is

Ordered that the United States of America be and it is hereby substituted as party plaintiff in the above-entitled cause, to which defendant excepts and its exception is allowed.

Done in Open Court this 9th day of July, 1947.

LLOYD L. BLACK,

United States District Judge.

Presented by:

/s/ JOHN E. BELCHER,

Assistant United States Attorney.

[Endorsed]: Filed July 9, 1947. [87]

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 1279

UNITED STATES OF AMERICA,
Plaintiff,

vs.

M. A. WYMAN, d/b/a M. A. Wyman Lumber
Company, et al.,

Defendants.

NOTICE OF APPEAL

Notice Is Hereby Given that N. A. Wyman, M. A. Wyman, doing business as M. A. Wyman Lumber Company, and M. A. Wyman, M. H. Wyman and Edward Doran, doing business as the Wyman Mill Company, defendants above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit, from Paragraph II of the final judgment entered and filed in this action on October 1, 1946, awarding judgment in favor of plaintiff and against said defendants and each of them in the sum of \$19,130.67 and costs, and also appeal

from the docket entry denying defendants' motion for a new trial entered June 23, 1947.

Dated at Seattle, Washington, July 14, 1947.

C. E. HUGHES,

Attorney for all the
Defendants,

1026 Henry Building,
Seattle, Washington.

Received a true copy, July 14, 1947.

JOHN E. BELCHER,

Assistant U. S. Attorney.

[Endorsed]: Filed July 14, 1947. [88]

[Title of District Court and Cause.]

ORDER FIXING SUPERSEDEAS BOND
ON APPEAL

This matter coming on for hearing to fix the amount of supersedeas bond of defendants on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing to this Court from the "Authorization" filed herein by the Honorable Howard C. Speakman, United States District Judge for the State of *Nevada*, before whom the above cause was tried at Seattle, Washington, that authority has been granted the undersigned to approve the appeal bond and supersedeas bond on appeal of defendants the above cause in the total sum of \$20,250.00.

It is therefore, Ordered and Adjudged that defendants' appeal bond and supersedeas bond on

appeal to the United States Circuit Court of Appeals for the Ninth Circuit be and it is hereby fixed in the total sum of \$20,250.00.

One in Open Court July 14th, 1947.

ROGER T. FOLEY,
District Judge.

Approved and presented by:

C. E. HUGHES,
Attorney for Defendants.

Approved by:

JOHN E. BELCHER,
Assistant U. S. Attorney and
Attorney for Plaintiff.

[Endorsed]: Filed July 14, 1947. [89]

[Title of District Court and Cause.]

APPEAL AND SUPERSEDEAS BOND

Know All Men by These Presents:

That we, M. A. Wyman doing business as M. A. Wyman Lumber Company and M. A. Wyman, M. H. Wyman and Edward Doran doing business as The Wyman Mill Company and M. A. Wyman, as Principals, and General Casualty Company of America, as surety, acknowledge ourselves to be jointly indebted to United States of America, appellee in the above cause, in the sum of Twenty Thousand Two Hundred Fifty and 00/100 Dollars (\$20,250.00) conditioned that, whereas, on the 1st day of October, 1946, in the District Court of the United States for the Western District of Wash-

ington, Northern Division, in a suit depending in the court, wherein Paul A. Porter, Administrator, Office of Price Administration, was plaintiff and M. A. Wyman d/b/a M. A. Wyman Lumber Company and M. A. Wyman, M. H. Wyman and Edward Doran d/b/a The Wyman Mill Company, and M. A. Wyman were defendants, numbered on the civil docket as 1279, a judgment was rendered against the said M. A. Wyman d/b/a M. A. Wyman Lumber Company and M. A. Wyman, M. H. Wyman and Edward Doran d/b/a The Wyman Mill Company, and M. A. Wyman, and whereas in said suit so depending there was entered by the court on June 23, 1947, a docket entry denying defendants' motion for a new trial, and the United States of America having been substituted as plaintiff in lieu of Paul A. Porter, Administrator Office of Price Administration, and the said M. A. Wyman d/b/a, M. A. Wyman Lumber Company and M. A. Wyman, M. H. Wyman and Edward Doran d/b/a The Wyman Mill Company and M. A. Wyman, having filed in the office of the clerk of the said district court a notice of appeal to the U. S. Circuit Court of Appeals for the Ninth Circuit both in respect of said judgment and said order denying motion for a new trial.

Now, the condition of the above obligation is such that if the said M. A. Wyman d/b/a M. A. Wyman Lumber Company and M. A. Wyman, M. H. Wyman and Edward Doran d/b/a The Wyman Mill Company and M. A. Wyman, shall prosecute their appeal to effect and satisfy the said judg-

ment in full together with costs, interest and damages for delay, if for any reason the appeal is dismissed, or if the judgment is affirmed, and satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may adjudge and award, then the above obligation is void, else to remain in full force and effect.

Dated at Seattle, Washington, this 14th day of July, 1947.

M. A. WYMAN d/b/a
M. A. WYMAN LUMBER
COMPANY,
M. A. WYMAN,
M. H. WYMAN and
EDWARD DORAN d/b/a
THE WYMAN MILL
COMPANY,
M. A. WYMAN.

By /s/ C. E. HUGHES,
Their Attorney.

[Corporate Seal]

GENERAL CASUALTY
COMPANY OF AMERICA,
/s/ R. M. SULLIVAN,
Attorney-in-Fact.

Approved:

JOHN E. BELCHER,
Assistant U. S. Attorney.

Approved this 14th day of July, 1947.

ROGER T. FOLEY,
United States District Judge.

[Endorsed]: Filed July 14, 1947. [90]

[Title of District Court and Cause.]

ORDER FOR TRANSMITTAL OF ORIGINAL
EXHIBITS IN LIEU OF COPIES

On motion of all the defendants above named,
and plaintiff consenting thereto, and it appearing
to the Court that due cause exists therefor, It Is
Hereby

Ordered and Adjudged that the Clerk of the
above entitled Court be, and he is, hereby directed
to include in the record on appeal of the above
matter to the Circuit Court of Appeals for the
Ninth Circuit all the originals of the exhibits ad-
mitted in evidence at the trial of the above cause,
in lieu of copies thereof.

Done in Open Court July 14th, 1947.

ROGER T. FOLEY,
District Judge.

Presented by:

C. E. HUGHES,
Attorney for all the
Defendants.

Approved and agreed to:

JOHN E. BELCHER,
Attorney for Plaintiff.

[Endorsed]: Filed July 14, 1947. [91]

[Title of District Court and Cause.]

STATEMENT OF POINTS

The points upon which the defendants and appellants, M. A. Wyman, M. A. Wyman, doing business as M. A. Wyman Lumber Company, and M. A. Wyman, M. H. Wyman and Edward Doran, doing business as the Wyman Mill Company, intend to rely on in this appeal are as follows:

1. The District Court erred in permitting any evidence, over defendants' objection, tending to establish fraud, when none was alleged.

2. The District Court erred in failing to dismiss the action because the second amended complaint served and filed after the statute of limitations had run, introduced a new and different cause of action.

3. The District Court erred in denying defendants' motion to dismiss this case at the close of plaintiff's testimony, for failure of proof.

4. The District Court erred in finding as a fact, and concluding as a matter of law that these defendants made any sales of surfaced lumber at prices in excess of the maximum prices fixed by Revised Maximum Price Regulation 26.

5. The District Court erred in finding as a fact, and concluding [92] as a matter of law that Granite Falls Planing Mill, a corporation, was used by these defendants for the purpose of securing prices in excess of the prices permitted under Revised Maximum Price Regulation 26.

6. The District Court erred in holding that Revised Maximum Price Regulation 26 fixed the prices for surfacing or planing lumber.

7. The District Court erred in holding M. A. Wyman personally liable for any dereliction of Granite Falls Planing Mill, a corporation, merely because he was an officer thereof, especially where said corporation is not a party defendant.

8. The District Court erred in failing to conclude as a matter of law that plaintiff was estopped to maintain the action, by the course of conduct of his subordinates.

9. The District Court erred in failing to conclude as a matter of law that the defendants did not violate Revised Maximum Price Regulation 26.

10. The District Court erred in holding that service on one partner is service on all the other partners.

11. The District Court erred in awarding any judgment against M. H. Wyman or Edward Doran, after they had long since been dismissed from the action by formal order of the Court.

12. The District Court erred in awarding a judgment in favor of plaintiff and against these defendants, and in failing to adjudge that the action should be dismissed.

13. The District Court erred in denying defendants' motion for a new trial.

C. E. HUGHES,

Attorney for Defendants.

Received a true copy this 16th day of July, 1947.

/s/ JOHN E. BELCHER,

Assistant U. S. Attorney.

[Endorsed]: Filed July 23, 1947. [93]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF
RECORD ON APPEAL

Come now all the defendants above named, and as appellants, submit the following as their designations of record on the appeal of the above cause to the United States Circuit Court of Appeals for the Ninth Circuit:

1. Summons and complaint for injunction and treble damages, and U. S. Marshal's return thereon (1).

2. Motion to Quash Service of Summons and Complaint on Granite Falls Planing Mill, a corporation, and affidavit in support thereof (5).

3. Summons and Amended Complaint for injunction and treble damages (7), and U. S. Marshal's return thereon (14).

4. Motion to quash service of summons and amended complaint on Granite Falls Planing Mill, a corporation, and M. H. Wyman, and affidavit in support thereof (11).

5. Motion to quash service of summons and amended complaint on Edward Doran (16), and affidavit in support thereof (17).

6. Motions of all the defendants to dismiss Counts I and II of the Amended Complaint (9 and 20).

7. Order on motions of Granite Falls Planing Mill, a corporation, M. H. Wyman and Edward Doran to quash the service of summons [94] and amended complaint (39).

8. Order on defendants' motion to dismiss Counts I and II of the amended complaint (38).

9. Summons and Second Amended Complaint for injunction and treble damages, and U. S. Marshal's return thereon (40 and 43).

10. Motion to quash service of summons and second amended complaint on M. H. Wyman (45).

11. Motion of Edward Doran to quash service of summons and second amended complaint, or to dismiss (48).

12. Motion of M. A. Wyman and M. H. Wyman to dismiss Counts I and II of the second amended complaint (44).

13. Motion of Edward Doran to dismiss Counts I and II of the Second Amended Complaint (49).

14. Order for substitution (52).

15. Order on Motions of M. H. Wyman and Edward Doran to quash service of summons and second amended complaint (61).

16. Order on defendants' motions to dismiss Counts I and II of the second amended complaint (62).

17. Answer of M. A. Wyman to Second Amended Complaint (65).

18. Special appearance of Edward Doran (67).

19. Stipulation (95).

20. Findings of Fact and Conclusions of Law (101).

21. Judgment (102).

23. Order on Motion to Stay Judgment (103).

24. Amended motion and motion of Edward Doran for new trial (105 and 106).

25. Docket entry June 23, 1947, showing denial of motions for new trial (116).

26. Order denying motions for new trial (117).

27. Authorization (118).

28. Order approving withdrawal and substitution of attorneys (123). [95]

29. Withdrawal of attorneys for Edward Doran (122).

30. Substitution of attorneys for Edward Doran (124).

31. Substitution of plaintiff (126).

32. Notice of Appeal by defendants (128).

33. Order fixing supersedeas bond on appeal (129).

34. Appeal and supersedeas bond (130).

35. Order for transmittal of original exhibits in lieu of copies (132).

36. Transcript of all the evidence and proceedings at the trial of the above cause, including entire Reporter's transcript thereof (136).

37. Statement of points.

38. Designation of contents of record on appeal.

39. Clerk's Certificate.

C. E. HUGHES,

Attorney for All the
Defendants.

Received a true copy this 16th day of July, 1947.

JOHN E. BELCHER,

Asst. U. S. Attorney.

[Endorsed]: Filed July 23, 1947. [96]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that the foregoing typewritten transcript of record, consisting of pages numbered from 1 to 96, inclusive, is a full, true and complete copy of so much of the record, papers and other proceedings in the above-entitled cause as is required by stipulation of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the foregoing, together with the reporter's transcript of testimony and proceedings transmitted as a part hereof, together with the original exhibits constitute the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparing the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to wit:

Clerk's fees for making record, certificate or return:

9 pages at 40c.....	\$ 3.60
87 pages at 10c.....	8.70
(copies furnished)	
Appeal fee	5.00

Total\$17.30

I hereby certify that the above amount has been paid to me by the attorney for the appellants.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 31st day of July, 1947.

[Seal]

MILLARD P. THOMAS,
Clerk.

By /s/ TRUMAN EGGER,
Chief Deputy Clerk.

In the District Court of the United States for the
Western District of Washington, Northern
Division

No. 1279

PAUL A. PORTER, Administrator, OFFICE OF
PRICE ADMINISTRATION,

Plaintiff,

vs.

M. A. WYMAN, d/b/a M. A. WYMAN LUM-
BER COMPANY; M. A. WYMAN, M. H.
WYMAN, and EDWARD DORAN, d/b/a
THE WYMAN MILL COMPANY, and M. A.
WYMAN,

Defendants.

TRANSCRIPTION OF PROCEEDINGS
AT TRIAL

Before: The Honorable Howard C. Speakman,
District Judge.

September 26, 1946.

Appearances:

Andrew H. Hitchcock, Esq., and James W. Por-
ter, Esq., appearing for the Plaintiff;

C. E. Hughes, Esq., appearing specially for all
defendants except Edward Doran;

Raymond D. Ogden, Jr., appearing specially for
the Defendant Edward Doran.

Mr. Hughes: If the Court please, I think the
Court should have a very clear idea of what has
transpired in this case. If your Honor will permit
me five or ten minutes, I think I can cover the
salient points that I think may arise this morning.

This action was started in 1945 by the O.P.A. to recover \$61,000, I believe is the amount with which they originally started out. They made some six or eight defendants in the suit for violation of Maximum Price Regulation 539. That is a Servicing [3*] Regulation.

M. A. Wyman was the only party defendant who was served on that case in the original Complaint. I appeared for M. A. Wyman and moved to dismiss the Complaint on the ground that it didn't state facts sufficient to constitute a cause of action. The O.P.A. evidently realizing that the Complaint was faulty, did nothing on that motion for a period of four months, and in November, 1945, it served a Summons and Complaint on all of the defendants.

I then appeared specially for M. H. Wyman, who is the son of M. A. Wyman, and the Granite Falls Planing Mill, and moved the Court to quash the service on the ground that the Complaint was not served within the three months' period as provided by Rule 15, local rule of this court.

That law conforms with the rule of the State Court which requires that the Complaint must be served within ninety days after it is filed or the action will be dismissed against the defendants not served. That is substantially what that rule provides.

That matter came on for hearing before Judge Bowen, and after argument Judge Bowen granted my motion to quash the service as to M. H. Wyman and The Granite Falls Planing Mill, a corporation. Mr. [4] Ogden, who is here, appeared for Edward

*Page numbering appearing at top of page of original Reporter's Transcript.

Doran, the other defendant, and made a similar motion, and the Court granted the motions and entered an order on those motions dismissing,—the Court went further than the motion and dismissed the action as to The Granite Falls Planing Mill and M. H. Wyman and Edward Doran. So, therefore, I concluded they were out.

Then, however, the O.P.A. decided to serve a Second Amended Complaint; and they attached a Summons to the Second Amended Complaint and made the same parties defendant except Granite Falls Planing Mill. They left that corporation out in the Second Amended Complaint but served each of the defendants with another Summons and Second Amended Complaint.

The Court: Are you speaking of the Second Amended or the Amended Complaint?

Mr. Hughes: The Second Amended,—they also did that with the Amended Complaint.

The Court: All right.

Mr. Hughes: Of course, I preserved my special appearance throughout. But the Second Amended Complaint alleged—not a violation of 539, but a violation of Revised Maximum Price Regulation 26.

Now I want to state that the Regulations in the OPA are divided into two general classes. One is known [5] as a commodity regulation which regulates the price of a commodity. Such a Regulation would affect automobiles, the sale of lumber. Then we have what is known as Service Regulations which cover prices to be charged for services on certain commodities such as repairing automobiles,

a laundry, and planing lumber. That covers under Service Regulations and that is covered in this case by 539.

The O.P.A. is required to set out the considerations prompting, or the reasons or considerations for the enactment of a Regulation. In fact, when each amendment is made to a regulation,—and by the way there are hundreds and hundreds of amendments to these regulations—26 and 539. As each amendment comes out they are required to set out the Considerations of why they would make this change. Your Honor will notice a violation, of course, of 539 which is a Service Regulation and is entirely different from a violation of 26 which is a Commodity Regulation. It requires entirely different proof and your Honor can realize that I think without any argument.

Anyway, strange to say, the Plaintiff decided to keep all of these defendants in and serve them all again with a Second Amended Complaint and a summons alleging this violation of 26. That is the first time [6] that 26 has come into the picture. I appeared specially for M. A. Wyman.

I may say, by the way, that all three of the Complaints alleged that this violation occurred between July 11, 1944, and December 22, 1944—that is about a 6-months' period there. Now, the Emergency Price Control Act says that any action of this kind must be commenced within one year after the last alleged violation. The Second Amended Complaint was not filed until February 27th, 1946.

That is more than two months after the last violation; in other words, it was outlawed I maintain at the time the Second Amended Complaint was filed. Therefore, I appeared specially for M. A. Wyman and I have preserved his special appearance throughout because the action shows on its face that the Statute of Limitations expired.

I also moved on behalf of M. H. Wyman, and a similar motion was made on behalf of Edward Doran, to dismiss them from the case a second time. The matter came on for hearing and the Court dismissed them as individuals. Your Honor may have read the Order—but the Court inserted in the Order, as to the partnership the motion was denied.

Now, I don't know what the Court had in mind. I [7] can't to save my life figure out why the Court would write that in an Order after they had been dismissed on the prior complaint. So that the situation now is to my mind anomalous and I just can't understand how any judgment could possibly be entered against M. H. Wyman, and the same applies, of course, to Mr. Doran.

I don't know how Counsel proposes to show that M. A. Wyman had any connection with this. I want to state to your Honor that I confidently believe that he has changed his cause of action and therefore, if that is true, of course the statute of limitations would ipso facto, decide the whole thing right off. Besides that—and I call this to the Court's attention now, because I realize the case will be tried before your Honor without a jury but I want the

record to be clear on this question that evidence of what The Granite Falls Planing Mill may have done has nothing to do with the issues in this case; that the issue in this case is very clear. They have set out *M. A. Wyman*,—another thing; I might digress for a moment.

I thought at the time the Granite Falls Planing Mill was dismissed that that would end the suit. But he has tried to keep the same allegations into a large [8] extent. Notwithstanding the fact that the Court has dismissed these other two defendants, he still insists that the “defendants” did this. To my mind there is only one defendant in the suit in the various capacities, *M. A. Wyman* doing business as *Wyman Lumber Company*, and *M. A. Wyman’s* connection with the *Wyman Mill Company*. That is the only defendant that I can see that is in the suit now. So any evidence pertaining to the Granite Falls Planing Mill which has been dismissed from this suit I, of course, will object to.

I just wanted the Court to get a brief picture of this.

The Court: *Mr. Hughes*, did you raise this question of statute of limitations at any time?

Mr. Hughes: Oh, yes.

The Court: That was before you answered?

Mr. Hughes: I raised it in a way that it was a separate and distinct cause of action,—that the second complaint was a separate and distinct cause of action, and that the statute of limitations had run against it.

The Court: What was the Court's ruling on that?

Mr. Hughes: I don't know whether your Honor read some remarks there,—I didn't have them transcribed. The Office of Price Administration had them [9] transcribed. Your Honor read the Court's decision there. It is four or five pages,—very short.

The Court: Do you have a copy of it there?

Mr. Hughes: Yes, your Honor. The O.P.A. had it transcribed, and I think it gives the Court some idea.

The Court: How did you raise this, Mr. Hughes?

Mr. Hitchcock: By a motion to dismiss.

Mr. Hughes: By a motion to dismiss. [10]

The Court: Your original complaint had four counts.

Mr. Hitchcock: Yes. Two of those involved trucking charges. Mr. Hughes satisfied me that there was no merit in the trucking charges so those were voluntarily dismissed; they are out.

The Court: So there were two for trucking charges?

Mr. Hitchcock: That is correct.

The Court: What were the other two for?

Mr. Hitchcock: For violation of Maximum Price Regulation 539, one for injunction and one for treble damages.

The Court: When did you charge that violation in your original Complaint?

Mr. Hitchcock: I charged it between the dates of [16] July 11, 1944, and December 22, 1944—the dates of the occurrences.

The Court: In the original Complaint?

Mr. Hitchcock: Yes, sir. [17]

The Court: You claim, then, that M. A. Wyman used these companies through which he manipulated to raise these prices?

Mr. Hitchcock: That is true.

The Court: The Court can always look through the corporate veil.

Mr. Hitchcock: I wanted to place that before your Honor for your consideration of the evidence.

I do believe that I should be entitled to place that before you for your consideration. I think that is something that is necessary for the trial of this case and I think that it has been alleged sufficiently within the transactions we have set out from the beginning and also in the Second Amended Complaint.

Mr. Hughes: I think your Honor clearly sees, [31] now, that he proposes to amend his complaint again by showing fraud or evasion. I don't know where this thing will end up. But it is very clear that he says now that he proposes to show fraud or evasion. I certainly can't conceive of such evidence going in. And that is what I wanted him to state in the first place,—just what he expected to prove, which would show very clearly that this is a new cause of action that he will attempt to prove.

Your Honor asked a very pertinent question here a moment ago about the Granite Falls Planing Mill. I can tell you why he has proceeded as he has,—because the Granite Falls Planing Mill, as alleged in the first complaint, was the only one

of the defendants who did any planing. The others did no planing, performed no services.

Now, when the Granite Falls Planing Mill was dismissed, instead of him going home like a good boy and giving up, he didn't do it. He said, "I am going to proceed against M. A. Wyman."

If he had set up what he now claims he is going to try to prove,—namely fraud or evasion—the Court would have thrown him out of court just as soon as it was called to his attention. But he proposes to come in, so to speak, by the back door, and try to show [32] through a further amendment that there was fraud committed here. I think it is very clear that he has changed his cause of action.

Our Supreme Court laid down the rule on that question of change of the cause of action as early as 158 U. S. It is in the *Union Pacific Railway vs. Willer*, 156 U. S. 285.

The Court: Is that under 15 (c) ?

Mr. Hughes: 15 (c) wasn't passed then. But the court lays down a rule and it has been cited since 15 (c) has gone into effect that this is the law to-day,—that you can't change a cause of action.

Now the question is "What is a change of cause of action"—that is the only thing involved here. What amounts to a change of cause of action? [33]

The Court: All right. Now, the pleading, the Complaint, the allegations, are not for the purpose of getting the man in court and after he is in there, springing something new on him,—springing a trap on him. The function of a Complaint is to in general language be specific and notify the defendant of

what he is charged with so that he can come into Court and defend. It is not for the purpose of making one broad statement and getting him into court and then proving something on him that he never heard of or thought of before. Now, if your pleadings are specific enough to permit you to prove this, the Court will [40] permit you to prove it. There isn't any question but what your theory of the evidence is admissible if the pleadings justify it.

This thing of filing a Mother Hubbard pleading, and then coming in and proving anything that is in the mind of the plaintiff, that shall not be tolerated by the courts because that is resorting to trickery and the courts are not established for that purpose.

Mr. Hitchcock: A violation of 26, which this is.

The Court: —where you say they made numerous sales to persons at prices in excess of the maximum price. Now, that alone means that it simply went out and sold for more than the maximum price. It doesn't say that he did it by a straw man built over here or that he did it by fraud or anything of the kind. You just say that he went out and sold it. [42]

The Court: I have been going over this file and attempting to learn what has taken place in this case in the past. The reporter was kind enough to read to me the arguments on these motions of the defendants—the motion to dismiss the Second Amended Complaint and also the motion to make more definite and certain.

I noticed that the Court just denied your motion to make more definite and certain, Mr. Hughes.

Now, I want to ask you, Mr. Hughes, did you know before today that the plaintiff intended to and would offer to this court evidence as to the part that the Granite Falls Planing Mill played in this matter as they now contend; did you know about that before today? I mean by that, did you know that they would offer proof on that before today?

Mr. Hughes: Well, your Honor, I had no way of knowing positively. I have been trying to wrack my mind how he is going to prove this case; I do yet. [49] And I don't know right now how he intends to prove the case.

The Court: Have you seen this Statement of Facts or "Order of Proof" he has it titled? Have you seen that?

Mr. Hughes: I just read it, yes, your Honor. I have just read it. It was just handed to me this morning.

The Court: Well, as I understand, Mr. Hughes, that the plaintiff in this case will offer to show that the Wymans and Mr. Doran, I believe his name is, created this planing mill—the Granite Falls Planing Mill—had that corporation created and that was a dummy corporation, where they had this planing done, and that by so doing they could raise the price of lumber; and they will show that to show that they violated that part of 26 which prohibits that certain maneuvering on the part of lumbermen. Did you know before today that they would offer that?

Mr. Hughes: No, your Honor, I didn't know. As I say, I have never known just exactly how he is going to prove his case. I don't know even now how he hopes to prove it.

If I may state this: So far as the corporation is concerned, the corporation was organized in January, [50] 1944. There was no inhibition in any Regulation preventing a person owning a mill at that time from operating as they did operate later. So the corporation was organized at least three months I would say, before—at least two months before any regulation on this planing of lumber was adopted. The first regulation was Supplementary Order Number 27 to MPR-165. Now, all services were governed by 165 at all times. In April, 1944, an Order called Supplemental Order Number 27 came out—

The Court: Pardon me, Mr. Hughes. I am sorry to interrupt you. Let's don't argue that.

The thing I want to know is this: The Second Amended Complaint charges you with the sale of lumber beyond the ceiling price—in excess of the ceiling price. It doesn't say how you did it, it doesn't indicate how you did it.

Now, are you caught by surprise or are you not when they offer to prove that your clients manipulated this thing through the Granite Falls Planing Mill and thereby raised the price of lumber?

Mr. Hughes: Well, I will say this, your Honor: The last day or two I have been trying to figure out how they were going to prove it.

The Court: Did they ever tell you how they were [51] going to prove it?

Mr. Hughes: No, that was never gone into—how they were going to prove it.

The Court: I see nothing in this record that

indicates that you were informed by any of the record. You came in and asked them to make that more definite and certain. Judge Bowen denied that promptly and gave you your right of discovery—that you could pursue that. If you were caught by surprise—if you didn't know that that was to be their method of proof, this Court will not permit them to prove it. In other words, if by this overall complaint they have got you in here and you didn't know what the cause was, and if you would have filed a different Answer in this action had you known that, the Court will not permit them to do it.

Now, if you had of known that, would you have filed a different answer from that which you did file?

Mr. Hughes: Why, I think I would, your Honor. I would have to think it over, but I don't see how I could get by with the answer I filed in the case and meet such a charge. [52]

EDWARD DORAN

called as a witness on behalf of the Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hitchcock:

Q. Your name is Edward Doran?

A. That is correct.

Q. You are one of the defendants in this suit?

A. I suppose.

(Testimony of Edward Doran.)

Q. What is your occupation?

A. Mill superintendent.

Q. What is your present address?

A. Darrington, Washington.

Q. What was your address at the time you were served with [61] a Summons in this case?

A. Do you mean the first Summons—or what you served on me day before yesterday?

Q. The first Summons.

A. I imagine it was Granite Falls.

Q. How long have you been connected with the lumber industry?

A. Approximately thirty-five years.

Q. How long have you known M. A. Wyman, the defendant in this suit?

A. I would say in the neighborhood of five years.

Q. With reference to from July 11, 1944, to and including December 2, 1944, did you have any business connection with M. A. Wyman at that time?

A. I was just the superintendent of the mill.

Q. Were you connected with M. A. Wyman?

A. Well, I was, yes.

Q. Do you know of your own knowledge that the M. A. Wyman named in this case as being the owner of the M. A. Wyman Lumber Company, was the owner of the M. A. Wyman Lumber Company at that time?

A. That is right.

Q. Was he also the same person who was named as copartner in the Wyman Mill Company at that time?

A. That is correct. [62]

Q. Were you a partner also in the Wyman Mill Company at that time?

A. I was.

(Testimony of Edward Doran.)

Q. You were also a superintendent?

A. That is right.

Q. What were your duties?

A. My duties were to buy the logs for the mill and supervise the operation of the Mill, and hire the men.

Q. Where was the mill located?

A. In Granite Falls, Washington.

Q. Prior to this time, how long had you been working for M. A. Wyman?

A. Prior to the first summons, do you mean?

Q. No; prior to July 11, 1944.

A. Well, I imagine approximately two and a half years.

Q. In the same capacity?

A. That is right.

Q. In the same location?

A. That is right.

Q. Were you also at that time a stockholder in the Granite Falls Planing Mill?

A. I imagine I was.

Q. Well, were you? A. Yes.

Mr. Hughes: At what time was this? [63]

Mr. Hitchcock: Between July to December, 1944.

Mr. Hughes: I am going to object to that, if the Court please—any evidence bringing in the Granite Falls Planing Mill—for the reason that the Granite Falls Planing Mill has been dismissed from this action and it has nothing to do with the issues in this case what Granite Falls Planing Mill did or

(Testimony of Edward Doran.)

its organization or its operation or anything pertaining to it because there is nothing alleged in the Complaint; there is nothing alleged in any of the pleadings to show that Granite Falls had any connection with any violation of 26. I therefore object to it.

The Court: Overruled.

Q. (By Mr. Hitchcock): Were you a stockholder in the Granite Falls Planing Mill?

A. I was.

Q. During this period referred to?

A. That is right.

Q. Did you have any other connection with that company during this period?

A. Well, I was a partner in the Mill.

Q. I mean the Granite Falls Planing Mill.

Mr. Hughes: If your Honor please, I wish it understood that my objection goes to all of this testimony pertaining to the Granite Falls Planing Mill.

The Court: It may be so understood. [65]

Q. Will you describe to the Court the exact procedure involved during this period July to December in producing say, a rough dimension plank in the Wyman Mill; just describe how that lumber was produced.

A. I could describe the manufacturing part of it. Is that what you want me to do?

Q. Yes.

A. Well, first orders came in for the Wyman Mill Company. They came in in the rough. Then

(Testimony of Edward Doran.)

we would get that order in the rough. Then we would get orders from the customer that wanted lumber to the Granite Falls Planing Mill authorizing us to go ahead and resurface and plane and saw and remark and grade and load the lumber.

The Court: Will you state that again please?

The Witness: Our orders came from the customer to the Granite Falls Planing Mill authorizing us how to remanufacture that lumber, how to surface that lumber, whether we should re-saw it or plane it, mark it, grade it, and load it on cars.

The Court: That was from the buyer you got that request?

The Witness: That is right.

The Court: What lumber would he have you plane and saw and mark and so forth?

The Witness: Well, the order would come to our [68] mill and we would have it in the rough. Then we would not put that through the planer until such time as we got orders from the customer instructing us what to do with that lumber.

The Court: You are speaking of the Granite Falls Planing Mill?

The Witness: That is right.

The Court: The order would come there?

The Witness: Yes.

The Court: You would have the rough lumber there, is that right?

The Witness: That is right.

The Court: You understand that I don't know anything about lumber. In my country the only

(Testimony of Edward Doran.)

thing that grows higher than an ordinary man's knee is a cactus, so I don't know anything about lumber. Go ahead.

Q. (By Mr. Hitchcock): Who produced this rough lumber you are speaking about; wasn't that the Wyman Mill Company?

A. Wyman Mill Company produced some of it and we bought a tremendous lot of lumber. We bought from a large number of mills throughout the war that had no planers, and we planed it and sold it on the market.

Q. But a large proportion of it during the period we are [69] talking about was produced in the Wyman Mill, is that correct?

A. I wouldn't say that, Mr. Hitchcock; not a large proportion of it. We bought a tremendous lot of lumber from small gypo mills on the outside.

Q. Did you have any supervision or anything to do with the invoicing on this?

A. Not at all, Mr. Hitchcock.

Q. Do you know of your own knowledge who handled the invoicing? A. M. H. Wyman.

Q. On both operations? A. Yes.

Q. That is on the Granite Falls Planing Mill and also on the——

A. I took my orders from M. H. Wyman on both of them.

Q. M. H. at that time was a partner in the Wyman Mill and also—do you know whether or not he owned stock in the Granite Falls Planing Mill?

(Testimony of Edward Doran.)

A. I don't think M. H. at that time had any interest in the Wyman Mill. I think it was in the planing mill, I am quite sure. I am quite sure that is the way it was. I was always under that impression but I was just hired on a salary.

Q. You don't know, though, do you?

A. No, I would say I don't know.

Q. Do you know who handled the shipment of these shipments from the Granite Falls of the surfaced lumber?

A. All of the tallies were sent to our main office, Mr. Hitchcock; all of the shipments and invoices were made from there.

The Court: Did I understand you to say that you were a partner in the Wyman Mill Company?

The Witness: I was a partner in this way: I was hired on a salary and I participated in the company. We never made any money. We took a mill over and it was in terrible shape, and we put the money back into the mill.

The Court: Was that during July to December, 1944?

The Witness: Yes, it was.

Q. (By Mr. Hitchcock): What company handled the shipments if you know?

A. Northern Pacific?

Q. Where was the shipping point?

A. Snohomish.

Mr. Hitchcock: That is all.

(Testimony of Edward Doran.)

Cross-Examination

(Letter marked Defendants' Exhibit A-1 for Identification.)

By Mr. Hughes:

Q. Mr. Doran, handing you Defendants' Exhibit A-1, is [73] that typical of the instructions you got from all of your buyers—from all of your customers who wanted the Granite Falls planing mill to plane lumber?

A. Yes. All orders coming to the Granite Falls Lumber Company came like this. That is all I know.

Mr. Hughes: I will offer Exhibit A-1 in evidence.

Mr. Hitchcock: No objection.

The Court: It may be received.

(Defendants' Exhibit A-1 received in evidence.)

(Testimony of Edward Doran.)

DEFENDANS' EXHIBIT A-1

Letterhead of Central Lumber Sales Company

November 7, 1944

Granite Falls Planing Mill, Inc.

Box 237

Granite Falls, Washington

Gentlemen:

The M. A. Wyman Lumber Company will deliver to you shortly for our account, a car of Rough Green Fir and Hemlock, which we wish to be handled as follows:

1. All 2" and 4" stock to be S4S.
2. 3x12's to be left rough.
3. Send invoice to us for your services, which will be ceiling per MPR 539, for milling, grading, tallying, loading, etc. Your invoice to be paid upon receipt of same and is not subject to cash discount. (Represents labor only).
3. Ship car to C. L. Geer Lumber and Coal Company, Diller, Nebraska. Route via CB&Q.
4. Show M. A. Wyman Lumber Company as shippers and send B/L to them. Load in box car.

Very truly yours,

CENTRAL LUMBER SALES

COMPANY,

T. M. PIMLOTT.

TMP:jp

cc:MAW

Admitted Sept. 26, 1946.

Mr. Hughes: That is all.

(Witness excused.)

Mr. Porter: I would like to call Mr. Johnstone.

Mr. Hughes: Mr. Hitchcock—if your Honor has ruled that this evidence is admissible, as far as the Granite Falls Planing Mill, and if your Honor is going to permit the Plaintiff to show facts outside—what I consider outside of the issues in this case—I want to save all of the time that is possible, not only of the Court but of the witnesses, too. I am willing at this time to stipulate some facts, in order to save time, with the understanding that I am objecting [74] to that part of the testimony.

The Court: Mr. Hughes, the Court really hasn't ruled on anything. We did a lot of talking here and I told the Plaintiff to proceed. I take it that you have the right to make any objection to any of this evidence that you see fit and the Court does not mean to say that the Court will admit all that they propose.

You have a right to make any record you see fit and maybe the Court will agree with you on some of it. I didn't mean by that to preclude you from making any record of any objection that you see fit.

Mr. Hitchcock: We have a stipulation prepared, if the Court please, which embodies that fact. It will save a great deal of time. This question, for example, of the formation of the corporation of which I have certified copies we will have to introduce and things of that type.

The Court: You will stipulate to that?

Mr. Hughes: I will stipulate to any fact, your Honor. I don't want to delay this or put the plain-

tiff to any unnecessary work but, as I told him, I felt that this evidence was entirely inadmissible. However, if the Court permitted it to go in, I didn't want to delay the trial and wanted the Court to understand that [75] I am stipulating with the understanding that we object to the admissibility of it upon the grounds that I have stated that it is not within the issues; that he has changed his cause of action and now seeks to lay the foundation at least for fraud or deceit or evasion—I don't care what you call it—and that by doing so he has entirely changed the cause of action.

My objection, of course, goes to that line of testimony.

Mr. Ogden: If your Honor please, for the purpose of the record I would like to have the record show that the same objections that Mr. Hughes has made for Mr. Wyman also run for Mr. Doran, and in that way it won't be necessary to make two objections to each ruling.

The Court: Very well. The record may show that each objection made by Mr. Hughes on behalf of M. H. Wyman is also made by Mr. Ogden on behalf of Edward Doran. The record may show the same ruling.

Mr. Hughes, I may further make myself clear. Remember, Judge Bowen said to you that he would reconsider this matter when the evidence was in. I am trying to follow the procedure that he laid out. So I might say that I will exercise that same right. So just because the evidence goes in doesn't mean that [76] they are successful in the matter.

Mr. Hitchcock: We understand that, if your Honor please.

The Court: Mr. Hughes, I understand that you contend that no evidence pertaining to the Granite Falls Milling Company is admissible.

Mr. Hughes: That is right, your Honor.

The Court: You object to it?

Mr. Hughes: I object to it and I object to any evidence that tends or seeks to hold M. H. Wyman—and I presume the same applies to Mr. Doran—because they were dismissed from this case.

The Court: And that by this stipulation you do not waive that right?

Mr. Hughes: That is right.

The Court: I see; all right.

Mr. Hitchcock: I will call Mr. Rothfield.

JOSEPH ROTHFIELD,

a witness called on behalf of Plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hitchcock:

Q. State your name.

A. Joseph Rothfield.

Q. What is your address?

A. 13749 8th Avenue Southwest, Seattle 66, Washington.

Q. What is your occupation, Mr. Rothfield?

(Testimony of Joseph Rothfield.)

A. Investigator and Commodity Supervisor, Field Station, Seattle, for the Regional Lumber Enforcement Unit.

Q. How long have you been so employed?

A. Since March, 1945.

Q. What are your duties?

A. To investigate lumber cases.

Q. How long have you been connected with the lumber industry?

A. Over seventeen years. [78]

Q. In the course of your duties, have you had occasion to examine any transactions relative to the defendants or any of them?

A. I have.

Q. Do you know M. A. Wyman?

A. I do.

Q. That is through your investigations?

A. Through the investigation, yes.

Q. Do you know of your knowledge that the M. A. Wyman named as M. A. Wyman Lumber Company is the same person and the M. A. Wyman named as M. A. Wyman in the Wyman Mill Company?

A. I do.

Mr. Hughes: We admit that.

Mr. Hitchcock: I believe that is all admitted. I can dispense with that.

Q. (By Mr. Hitchcock): Mr. Rothfield, are you generally familiar with the Revised Maximum Price Regulation 26?

A. I am.

Q. What species of lumber does this regulation cover?

(Testimony of Joseph Rothfield.)

A. Douglas fir and other West Coast products.

Q. Was this regulation in force between July and December, 1944? [79] A. It was.

Q. Do you know whether or not it establishes maximum prices for surfacing lumber?

A. It does.

Q. Do you know what the surfacing charges under this regulation are for the type of lumber involved in this case? A. I do.

Q. What are those surfacing charges per thousand feet board measure?

Mr. Hughes: Just a minute. This is not an action, if the Court please, for surfacing lumber. This is an action under 26 to recover the price overcharge on the sale of lumber—not servicing of the lumber. I don't see the materiality of the witness stating the charges for servicing lumber. I think we are complicating the issues in this case. The only issue in this case is whether or not M. A. Wyman has charged over ceiling prices fixed by RMPR 26. Now, the regulations for surfacing lumber is covered by 539. I don't see the materiality and I object to it.

Mr. Hitchcock: If the Court please, I think the witness has testified that he knew that the prices for surfacing lumber were covered by RMPR 26. [80] If the Court wishes more elaboration, I might have the witness explain how that is done.

The Court: How what is done?

(Testimony of Joseph Rothfield.)

Mr. Hitchcock: How the charges are computed under 26 for surfacing lumber.

I can do that a little later on.

Mr. Hughes: I would like to do that because I am all wrong if 26 fixes any prices for surfacing lumber or servicing lumber. It is purely a commodity regulation, regulating the price at which the commodity shall be sold—either the rough green or the finished; but at no place does it fix the price for servicing.

The Court: It will probably be enlightening to both Mr. Hughes and myself.

Q. (By Mr. Hitchcock): Mr. Rothfield, will you explain to the Court in detail just how the price for surfacing lumber is computed under the provisions of RMPR 26?

Mr. Hughes: I object to the form of that question. I would like to ask the witness on a preliminary examination here to determine concerning 26.

Q. (By Mr. Hughes): You refer to Table 2 of 26, do you not, as fixing the price? [81]

A. For dimension lumber, yes.

Q. And you say under Table 2 of RMPR 26, it fixes the price for surfacing lumber?

A. That is right. And if the lumber is shipped in the rough, at the end of the table it says "deduct 1½."

Q. Show me in 26 where it fixes the price for surfacing lumber.

A. Table 2. It says, "Dimension Number 1 green, S-4-S American Lumber Standards."

(Testimony of Joseph Rothfield.)

The Court: What does that mean "S-4-S"?

The Witness: That means surfaced four sides, your Honor.

"And if the lumber is shipped in the rough form deduct for rough \$1.50." In other words, if a piece of 2 by 4 10-foot is shipped S-4-S, which means surfaced four sides, the price is \$33.00. As an example, if it is shipped in the rough form, it is \$31.50.

Q. (By Mr. Hughes): In other words, that fixes a price for the sale of surfaced lumber and also the price for the sale of rough lumber?

A. That is right.

Q. But it nowhere in there fixes the price for surfacing lumber, does it? Now answer that question. [82]

A. Table 2 gives the price for lumber shipped, and in the industry it has been recognized all through the years—

Q. I am not asking you that. Just answer the question, will you please?

A. Let me answer my question. All lumber dealers all through the period of the Office of Price Administration—if they have shipped it rough they have used the rough price; if they shipped it S-4-S they used the S-4-S price. That is the difference provided in the price.

Q. But it doesn't fix the price for surfacing lumber, does it—26? A. It certainly does.

Q. (By Mr. Hitchcock): Would you say that the difference between the two is the addition permitted under the regulation for surfacing?

A. That is right.

(Testimony of Joseph Rothfield.)

Mr. Hughes: What was the difference?

Mr. Hitchcock: The difference between the rough price and the S-4-S price is the addition.

Mr. Hughes: 26 is purely a commodity regulation. It fixes no price for surfacing. Nowhere in 26 does it fix the price for servicing lumber. It fixes the [83] price for green lumber. It fixes the price for lumber after it has been surfaced—that is all. It doesn't attempt——

The Witness: It fixes the price even for dry lumber, if you look further down.

Q. (By Mr. Hughes): 539 covers the price for servicing lumber, doesn't it—for planing lumber?

A. 539 is a custom milling regulation.

Q. Servicing regulation, isn't it?

A. No. It is a custom milling regulation covering the phases of the re-manufacture of lumber.

Q. Is it a commodity regulation?

A. It is a custom milling regulation.

Q. Answer the question. Is it a commodity regulation or servicing regulation?

A. It is known to me as a custom milling regulation. That is all I can answer.

Q. You won't answer that question?

A. I cannot answer it anyway because that is the way the regulation reads.

Q. You are familiar with the regulation aren't you?

Mr. Hitchcock: If the Court please, I would like to have a ruling on the admissibility of this evi-

(Testimony of Joseph Rothfield.)

dence and then I would like to complete my examination, [84] and if Mr. Hughes then wants to cross-examine, it might be proper.

Mr. Hughes: I wanted to determine the accuracy of the statement, that is all. With the preliminary I am through right now.

The Court: Go ahead.

Mr. Hitchcock: Thank you, sir.

Q. (By Mr. Hitchcock): Are you familiar with Sections 1 and 16 of Revised Maximum Price Regulation 26? A. I am.

Q. Just generally what do those provisions hold?

Mr. Hughes: Just a minute. I think the Court can read that and understand it as well as anybody else.

The Court: You may explain any of those tables but—the interpretation, the plain language, the Court will do that.

Q. (By Mr. Hitchcock): What period of time was covered by your investigation in this case?

A. July 11, 1944, to December 22, 1944.

Q. With reference to the sales involved, do you know whether or not these were the same sales in each case—— [85] A. Yes.

Mr. Hughes: Just a moment. I want to ask a question.

Q. (By Mr. Hughes): Were you ever in Mr. Wyman's office? A. No.

Q. The Wyman Lumber Company's office?

A. No, sir.

Q. Or the Granite Falls Planing Mill's office?

A. No.

(Testimony of Joseph Rothfield.)

Q. What investigation had you made of their operations?

A. Of the records of M. A. Wyman, doing business as M. A. Wyman Lumber Company and the Wyman Mill.

Q. Where did you get those records?

A. From the office of M. A. Wyman.

Q. Did you get the records from the office of M. A. Wyman?

A. I did not personally get the record of M. A. Wyman, but they were brought to our office.

Q. All you know is what those records show?

A. That is right.

Mr. Hitchcock: That amount is stipulated, if the Court please, in the procedure.

Mr. Hughes: I think, your Honor, I will ask to strike all of his testimony because all of his testimony is based upon what he has read of records that the O.P.A. Office has produced for him to read. He doesn't know anything about it. He hasn't investigated it and I move now to strike his entire testimony.

The Court: How did your agency get these records?

Mr. Hitchcock: Those records, if the Court please, were obtained from the office of the M. A. Wyman Lumber Company. We gave our receipt for them. We had them photostated. An investigator at that, who was in our unit and who is no longer there, and who I understand has since become ill and could not attend, was the person who

(Testimony of Joseph Rothfield.)

returned them. This witness is familiar with the regulation involved, and has checked the photostatic copies with the computations which were made in the office at the same time he was employed there.

The Court: Were they given to you voluntarily or given to you by an order of Court?

Mr. Hitchcock: They were given to us voluntarily. However, in the stipulation which I signed myself, the Defendant preserved his Constitutional rights of immunity with reference to those records. However, as your Honor knows, those records are required to be kept by the regulation and we therefore took the [87] position they were quasi public documents and we were entitled to examine them.

The Court: All right. Go ahead. Mr. Hughes' motion is denied. Go ahead.

Q. (By Mr. Hitchcock): Have you computed the correct ceiling prices under RMPR 26 for surfacing the footage of rough lumber involved in these transactions? A. Yes.

Q. Do you know that figure?

A. The total footage is 3,122,732 feet board measure.

Q. What would be the ceiling price for surfacing?

Mr. Hughes: Just a moment. That is a conclusion, I think, your Honor—what would be the correct price for surfacing?

Mr. Hitchcock: Under 26, I said. He is familiar with 26.

(Testimony of Joseph Rothfield.)

Mr. Hughes: Is he asking for servicing? This is not for surfacing—this is for selling lumber, rough lumber. All that Wyman sold was rough green lumber. That is all he sold in the world.

The Court: You are asking in the price for surfacing?

Mr. Hitchcock: The correct amount for surfacing. It is stipulated to, if the Court please. If the [88] Court feels it is acceptable, we can use the stipulation.

The Court: Overruled. Answer that question.

A. \$3826.25. That is the differentiation in the price between surfaced-four-sides lumber and rough lumber.

The Court: As shown by what?

The Witness: As shown by the tables under which each item is priced.

Mr. Hughes: What was the amount?

The Witness: \$3826.25.

Mr. Hughes: That represents what?

The Witness: The surfacing price of the lumber.

Mr. Hughes: The surfacing price of the lumber?

The Witness: The surfacing price of the lumber; the differentiation between the green, the rough, and the surfaced product.

Mr. Hughes: This \$3,826 represents the difference between what?

The Witness: If I may put it in an example, a 2 by 10 surfaced rough and a 2 by 10 surfaced four sides.

(Testimony of Joseph Rothfield.)

Mr. Hughes: That doesn't answer my question. You figured out here \$3,826.25. What does that [89] figure represent?

The Witness: That is the difference between shipping the lumber in the rough and shipping the lumber in the surfaced.

Mr. Hughes: How do you arrive at that figure?

The Witness: Through the tables; I figured the invoices.

Q. (By Mr. Hitchcock): Mr. Rothfield, from your study of the records of the defendants, did you ascertain the amount that was charged for surfacing as shown by the invoice of the Granite Falls Planing Mill?

Mr. Hughes: Just a moment——

A. Yes.

Mr. Hughes: The Granite Falls is not a defendant in this case. I think we are getting quite far afield unless I misunderstand what Counsel is going to try to prove in this case. I am up a tree, so to speak. I just don't know what he is trying to get at and how he is going to get at it. Under the issues in this case I think it is impossible and I can't understand how the figures obtained from Granite Falls Planing Mill are going to help the Court solve this question, the issue of which is before [90] the Court. I object to it.

The Court: What is the purpose of it?

Mr. Hitchcock: The purpose is to show that these transactions, which he has already testified to, were the same transactions involving the same

(Testimony of Joseph Rothfield.)

footage. Mr. Doran, if you remember his evidence, testified that the invoices were made up in the same office which was the office of the M. A. Wyman Lumber Company and showed overcharges in the amount of approximately \$19,000 above the amount that could be charged under the regulation. We are speaking, if the Court please, of the identical same lumber Mr. Rothfield has just testified to.

Mr. Hughes: The question was "Did the Defendants do this" and I don't know what he means by the "defendants." The Granite Falls is not a defendant.

The Court: No, they are not a defendant.

Mr. Hitchcock: I might rephrase my question, if the Court please. I might say "the defendants."

Mr. Hughes: Who do you mean by "defendants"?

Mr. Hitchcock: Will you wait until I finish my question and then you can object to it. Pardon me, your Honor.

Q. (By Mr. Hitchcock): Mr. Rothfield, did you make any [91] computation respecting the exact amount charged by the defendants with reference to surfacing charges; did you make that—

Mr. Hughes: I object to the form of the question, if the Court please, because the word "defendants" is so misleading that the record will not show—and M. A. Wyman is the only defendant in this. There is no reason why he can't say "M. A. Wyman." But instead of that he tries to bring in a blanket question covering all of the defendants.

(Testimony of Joseph Rothfield.)

It doesn't seem that a question like that is quite fair. He should state specifically what he is trying to prove. I don't know whether it is somebody who has been dismissed from this case or whether it is somebody else.

The Court: Who do you mean?

Mr. Hitchcock: That was a preliminary question. I meant the invoices made up in the offices of the M. A. Wyman Lumber Company and sent out by the Granite Falls Planing Mill which at that time was headed by Wyman, and the superintendent was Ed Doran who was also at the same time the superintendent of the Wyman Mill Company.

The Court: When you say "defendants" who do you mean?

Mr. Hitchcock: I meant M. A. Wyman through the [92] use of the Granite Falls Planing Mill.

Q. (By Mr. Hitchcock): Will you state if Mr. M. A. Wyman, defendant in this case, who at that time was superintendent of the Granite Falls Planing Mill, made any charges for the surfacing of this lumber that you have heretofore testified?

A. Yes.

Mr. Hughes: I object to it because he hasn't testified that he knows M. A. Wyman. He is trying to state now that M. A. Wyman did this for the Granite Falls Planing Mill. How can he state that unless he knows it?

The Court: Well, that is for cross-examination. You can ask him that. Go ahead.

(Testimony of Joseph Rothfield.)

Q. (By Mr. Hitchcock): Did you make such?

A. I did.

Q. What was that about? A. \$22,955.44.

The Court: And that represents what?

The Witness: The surfacing.

The Court: The surfacing of what?

The Witness: The lumber.

The Court: What lumber? [93]

The Witness: The lumber of M. A. Wyman.

The Court: Is that the lumber that is mentioned in this complaint?

The Witness: That is right.

Q. (By Mr. Hughes): You say the lumber of M. A. Wyman? A. That is right.

The Court: Go ahead.

Q. (By Mr. Hitchcock): Have you had occasion to subtract these figures? A. Yes.

Q. What is that amount?

A. Do you mean the difference?

Q. Yes. A. \$19,129.09.

The Court: That represents what?

The Witness: The over-the-ceiling charge.

The Court: You say that represents the over-charge?

The Witness: Yes.

The Court: Now, what do you mean by "over-charge?"

The Witness: The difference in the price of the rough lumber and the surfaced lumber under Table 26. [94] The rough lumber is billed correctly \$89,427.38; and the identical lumber for surfacing

(Testimony of Joseph Rothfield.)

S-4-S is billed \$22,955.44; whereas under Table 26 the surfacing of that same lumber is \$3826.35; so therefore you deduct the \$3826.35 from the \$22,955.44. You have an overcharge of \$19,129.09.

The Court: How is that an overcharge; wherein is it an overcharge?

The Witness: Well, as I best can explain it, as I said taking as an example a 2 by 4 ten rough; under the Table 2 of RMPR 26, the price is thirty fifty. Under the price of a 2 by 4 ten S-4-S, the price is \$33.00—what did I mention before—the \$1.50 differentiation anyhow; that is the difference. The surfacing charge, as it is set up in these invoices, are two separate bills. One is for the rough lumber; one is for the surfacing. On the bill—on the invoice covering the surfacing, there is a pencil mark directing someone——

Mr. Hughes: Just——

The Witness: May I continue or not?

Mr. Hitchcock: The Judge will tell you.

The Court: Go ahead.

The Witness: There is a pencil mark on the rough invoice—there are two billings—stating to bill for surfacing so much money per thousand; then they have made that invoice. There are two identical invoices. For instance, if there was one carload shipped in M. K. T. thirty thousand feet of rough lumber; there is another invoice covering the same carload, thirty thousand feet at so much per thousand surfacing four sides. And there is one bill of lading for the same car, all three together matched, on the same day.

(Testimony of Joseph Rothfield.)

The Court: This lumber that is in question on this action?

The Witness: Yes.

The Court: How was that sold, surfaced or rough?

The Witness: Surfaced.

The Court: Is surfaced lumber permitted to be sold at a higher price than rough?

The Witness: That is right.

The Court: All right. Now again I ask you—pardon me, I don't quite understand you. Again I ask you: Wherein was the overcharge?

The Witness: The overcharge was in the computation as performed by M. A. Wyman.

The Court: How do you mean?

The Witness: The billing—their invoices. [96] I might make it clearer this way, Judge, for you: A 2 by 4 ten S-4-S, is \$33.00. A 2 by 4 ten rough is \$31.50. They billed 2 by 4 ten \$30.00 on one invoice rough; they billed another invoice bearing the same car number with the same footage at \$38.00—no, pardon me; \$8.00 for surfacing four sides.

The Court: Do you mean to say that the overcharge was in that they charged too much for the surfacing?

The Witness: They charged too much for the 2 by 4 ten, in the form in which they sold it, surfaced four sides.

The Court: Then they simply overcharged for surfaced lumber, is that correct?

(Testimony of Joseph Rothfield.)

The Witness: That is correct.

The Court: Then it was not an overcharge for the surfacing, is that right?

The Witness: Will you state your question again, your Honor?

The Court: As I understand, this lumber was sold surfaced.

The Witness: That is right.

The Court: Now, you say there was an overcharge?

The Witness: That is right.

The Court: Did that overcharge consist of just merely selling this surfaced lumber in excess of the ceiling price or did the overcharge consist in the charging of too much for the surfacing?

The Witness: In charging too much for the selling of the lumber.

The Court: Surfaced lumber.

The Witness: Surfaced lumber. The bill of lading calls that they ship surfaced lumber.

The Court: Well, was it surfaced lumber?

The Witness: The bill of lading states it was; the invoice states it was by the method of their invoicing. They show two invoices. They show the same invoice for rough and they show the same invoice for surfaced.

Mr. Hitchcock: May I ask a question at this point?

Q. (By Mr. Hitchcock): One invoice, Mr. Rothfield, covered the rough lumber, did it not?

A. That is right.

(Testimony of Joseph Rothfield.)

Q. Was that invoiced at approximately the ceiling price? A. That is right.

Q. With reference to the other invoice showing the surfacing, was that at or above the ceiling price? A. Above the ceiling price. [98]

The Court: Well, the surfaced lumber and the rough lumber doesn't sell at the same price, does it?

The Witness: No, sir. There is a differentiation in price between rough and surfaced.

The Court: Sure. So you say—as I understand you—you say that the day after they surfaced this lumber they sold it at a price in excess of the ceiling price for surfaced lumber?

The Witness: That is right; yes, sir.

The Court: All right.

Q. (By Mr. Hitchcock): Are you familiar, Mr. Rothfield, with the pricing provisions of MPR-539?

A. I am.

Q. Was that Regulation in effect at the time these transactions took place? A. It was.

Q. Will you state to the Court whether or not, from your examination of the defendants' records that Regulation had been used or attempted to be used for pricing? A. That is right.

Mr. Hughes: Had been used by whom?

Mr. Hitchcock: By the defendant, M. A. Wyman? [99]

Mr. Hughes: The witness has said a lot of things. He says he never has seen Wyman or talked to him. He might just as well answer that.

(Testimony of Joseph Rothfield.)

Mr. Hitchcock: We are getting into that point, Mr. Hughes. If you will let me proceed.

Q. (By Mr. Hitchcock): Will you explain your last statement just generally, Mr. Rothfield, please? A. What statement was that?

Q. Your last testimony relative to the charges attempted to be made under 539 by the defendant M. A. Wyman; just how is that done?

A. Well, the invoice for the rough lumber was pencil marked, which equals the amount of the surfacing invoice; in other words, a 2 by 4 column—they put down the price of \$8.00; if there was 3800 feet of 2 by 4, the other invoice had 3800 feet of 2 by 4 surfacing four sides at \$8.00 per thousand, covering the same shipment.

Q. Was that Regulation 539 applicable to the sales in this case? A. It was not.

Q. Why?

A. Because 539 covers custom milling; and the custom milling regulation calls for—that there shall be no [100] financial interest when the lumber is remanufactured, regardless of its being surfaced or cut in any form whatever.

Mr. Hughes: Just a moment, if the Court please. They are changing this thing a little further.

Mr. Hitchcock: I don't believe so.

Mr. Hughes: Besides, I am satisfied the witness will admit that this is all based on hearsay.

The Court: Make your objection.

Mr. Hughes: I object to the witness—I think it is clearly shown by the witness that most of his

(Testimony of Joseph Rothfield.)

testimony is based on what someone told him. He has never seen Mr. Wyman nor talked to anybody in the office. He doesn't know. Yet he purports to sit up here and talk very glibly about what M. A. Wyman did—that M. A. Wyman did this and that. There is nothing to show he ever talked to anyone. I therefore object to it. I think it ought to be stopped now because the witness has never seen those people and he is incompetent to testify. The whole testimony is simply hearsay.

Mr. Hitchcock: He has examined the records from which he is testifying.

The Court: He has talked about what the records show. I assume that you will show him those records [101] some time and show him that those are the records.

Mr. Hitchcock: Yes.

The Court: It is now after 4:00 o'clock. I believe in keeping strict hours, so we will take a recess until tomorrow morning at 10:00 o'clock.

(At 4:10 p.m., Thursday, September 26, 1946, proceedings recessed until 10:00 a.m., September 27, 1946, in the United States Court House.) [102]

Seattle, Washington
September 27, 1946, 10:00 A.M.

(All parties present as before.)

The Court: You may proceed.

JOSEPH ROTHFIELD

resumed.

Direct Examination

(Continuing)

The Court: May I ask this witness a few questions before you proceed?

Mr. Hitchcock: Yes, sir.

The Court: As I understand your testimony yesterday, this lumber sold by these defendants was all planed lumber.

The Witness: That is right.

The Court: As I understood from you yesterday, you checked their order.

The Witness: That is right.

The Court: And found that they had exceeded the maximum price as indicated by Table 2, did you say, of this—— [103]

The Witness: RMPR 26.

The Court: ——RMPR 26.

The Witness: That is right; that governs the products sold.

The Court: Is that the portion of this Regulation that you say covers it?

The Witness: Yes.

(Testimony of Joseph Rothfield.)

The Court: Will you take this copy of RMPR 26 and mark on Table 2 the portion of it that you say they have violated?

(Witness marks on document as requested.)

The Court: Will you read the part that you have marked for the purpose of the record?

The Witness: They have violated Table 2, Dimension number 1, green, S-4-S.

The Court: Green, S-4-S?

The Witness: Surfaced four sides.

The Court: Is there any other portion of that Regulation that you find they have violated?

The Witness: No.

The Court: All right, as I understand, you reached that conclusion after having examined their records?

The Witness: That is right. [104]

The Court: Do you have their records here?

Mr. Hitchcock: Yes.

The Court: Will you please refer to their records and use any part or all of them that you care to and show me from their records where they violated that?

I take it, Mr. Hughes, that from your stipulation here that you have no objection.

Mr. Hughes: That is right; no objection.

(Wyman invoices marked Plaintiff's Exhibit 1 for identification.)

(Wyman surfacing invoices marked Plaintiff's Exhibit 2 for identification.)

(Testimony of Joseph Rothfield.)

(Certified copy Articles of Incorporation marked Plaintiff's Exhibit 3 for identification.)

(Report allotment of shares marked Plaintiff's Exhibit 4 for identification.)

Mr. Hitchcock: 3 and 4 we won't introduce at this time.

Mr. Hughes: I don't have any objection to 1 and 2. This other, we will admit that this is a corporation. [105]

Mr. Hitchcock: It is stipulated that it is a corporation. It is also a question of who was the person who was president.

Mr. Hughes: We will admit Mr. M. H. Wyman was president during the year 1944.

Mr. Hitchcock: And also that he held the stock?

Mr. Hughes: He held 50 per cent of the stock.

Mr. Hitchcock: The authorized amount of stock being 200 shares, is that correct?

Mr. Hughes: Yes. That is, this is over my objection.

Mr. Hitchcock: That is your blanket objection, —that is all right.

The Court: This is over the objection of Mr. Hughes after the ruling, then Mr. Hughes makes these admissions. All right.

Mr. Hitchcock: Will you stipulate, also, subject to the same objection, that Edward Doran was the holder of 60 shares and that M. H. Wyman was the holder of 60 shares?

Mr. Ogden: Yes.

Mr. Hughes: Yes, that is correct.

(Testimony of Joseph Rothfield.)

The Court: Mr. Witness, will you take those records, any or all of them that you care to, and show wherein and how these defendants violated that portion of the Regulation that you say they did?

Mr. Hitchcock: If the Court please, there is also a recapitulation which has been prepared in this case in also the same order which he might wish to refresh his recollection from to present the matter a little more clearly to the Court. I would like to have your permission to show Mr. Rothfield also this.

Mr. Hughes: I am opposed to encumbering the record unnecessarily. I don't think we have reached the stage where we can go into the figures.

Mr. Hitchcock: We have reached the stage where we are going into the figures.

The Court: Well, I think the witness can do it from these exhibits before him.

Mr. Hitchcock: Yes, I think he can.

The Court: Take your time, now.

Mr. Hughes: Mr. Hitchcock, all that you have here are invoices.

Mr. Hitchcock: That is correct.

(Wyman bills of lading (copies) marked Plaintiff's Exhibit 5 for identification.)

Mr. Hughes: You have withdrawn Exhibits 3 and 4?

Mr. Hitchcock: That is right—pursuant to the stipulation.

(Testimony of Joseph Rothfield.)

(Plaintiff's Exhibit 3 withdrawn.)

(Plaintiff's Exhibit 4 withdrawn.)

Cross-Examination

Q. (By Mr. Hughes): You work under Mr. Hitchcock, don't you? A. I do.

Q. And you helped him prepare this case for trial? A. I got all of the facts together.

Q. Were you ever in the lumber business?

A. I was.

Q. You say you got all the facts?

A. I assembled facts as any investigator assembles facts.

Q. Who obtained the so-called facts?

A. The Office of Price Administration.

Q. You have read the reports of these investigators? A. I have.

Q. Do you know anything more than what is shown by those reports? [132]

A. I know what is shown by the records as presented here.

Q. And that is all you know?

A. And the reports.

Q. Just what is shown by the records here.

A. And the files.

Q. And your testimony is based entirely upon what those invoices show?

A. The overcharges are based upon what these invoices show.

Q. Yes; your claim for overcharges. Outside of those invoices, you know nothing about the charges made by the Granite Falls Planing Mill or M. A. Wyman Lumber Company?

(Testimony of Joseph Rothfield.)

A. Will you repeat that question.

(The last question was read by the reporter.)

A. These are the charges made and the invoices shown covering——

Q. Just answer my question, please.

A. I have answered it. These are the charges made by M. A. Wyman covering these shipments.

Q. I say: Do you know anything other than what is shown by those invoices? [133]

A. As to what?

Q. As to the facts pertaining to those invoices.

A. As to the overcharges?

Q. I say: Do you know anything outside of those invoices pertaining to this case? I will put it that way. It shouldn't take you long to answer that.

A. Will you please repeat that question again?

Q. What do you know outside of these invoices that have just been shown you as Plaintiff's Exhibits 1 and 2?

Mr. Hitchcock: I object to that, if the Court please. I believe it is a little too general even for cross-examination. Let him specify what facts.

Mr. Hughes: I am just trying to find out what this witness knows about the facts—if he knows anything outside of those invoices, I would like him to so state.

The Court: You may answer the question. Do you understand it?

The Witness: I don't understand his question.

The Court: He doesn't understand it.

(Testimony of Joseph Rothfield.)

Q. (By Mr. Hughes): You have examined these invoices, Plaintiff's Exhibits 1 and 2, haven't you? A. I have.

Q. Do you know anything about this case outside of what is [134] shown by those invoices?

A. These invoices——

Q. Just answer my question. Do you—yes, or no. A. Yes.

Q. Well, what do you know?

A. Well, if you will ask me a specific question, I will try to answer it.

Q. You just state what you know of your own knowledge outside of these invoices; do you know anything outside of the invoices—of your own knowledge? A. I do.

Q. Well, just state what you know to be a fact? Let us hear it; let us have it.

A. I do know the fact that these invoices should have been billed in one invoice instead of two invoices.

Q. I am not asking you that, I am asking you what facts you know outside of what is shown by these invoices? Just answer the question; what do you know?

A. That these shipments were not custom milling shipments. They were not milling in transit shipments.

Q. You claim that is shown by the invoices?

A. That is right.

Q. Well, do you know anything else?

(Testimony of Joseph Rothfield.)

A. If you will ask me specific questions, I will try to give you specific answers. I have told you that [135] these invoices are the ones that created the overcharge.

Q. You have never talked to anyone connected with the M. A. Wyman Lumber Company, have you? A. Except through you.

Q. Except me. I am the only one that you have talked to? A. That is right.

Q. You have never contacted either the office of Wyman Lumber Company, the Wyman Mill Company, or the Granite Falls Planing Mill?

A. Not personally. I have been to the Granite Falls plant there.

Q. Yes. You said you were up there. But that was lately, is that correct?

A. That is correct.

Q. Do you know anything outside of what is shown by those invoices? Now, you ought to be able to answer that.

The Court: If you can't answer the question, say so.

A. I can't answer the question.

Q. (By Mr. Hughes): You say you were in the lumber business prior to going with the OPA?

A. Not directly before going; but I have been in the lumber business for seventeen years.

Q. Where were you in the lumber business?

A. In the city of Chicago.

Q. What kind of work did you do?

(Testimony of Joseph Rothfield.)

A. I did buying and selling. I have done every phase of the distribution of lumber.

Q. Do you mean buying and selling for yourself? A. Not in the producing end.

Q. For yourself?

A. For myself and others.

Q. You were in the lumber business before?

A. Yes.

Q. And then you went with the OPA?

A. I did not come from the lumber business to the OPA. I came from the insurance business and went with the OPA.

Q. You quit the lumber business and went into the insurance business, and then finally came with the OPA?

A. That is right; I went with the Office of Price Administration.

Q. You say you are familiar with these lumber regulations, 26 and 539? A. I am. [137]

Q. I suppose that you have studied them specially for this case, RMPR 26 and 539?

A. I try to keep myself informed for every case.

Q. RMPR 26 fixes the price of lumber, doesn't it? A. It does.

Q. And 539 fixes the price for services performed on lumber, is that correct?

A. Under certain conditions.

Q. Under certain conditions?

A. That is right.

Q. But the purpose of 539 is to fix the price for servicing—planing lumber, we will say?

(Testimony of Joseph Rothfield.)

A. I think I should be asked to be relieved of that question because I think that could be best answered by the Department of the Office that can fully explain the use of 539.

Q. Now, 26 doesn't cover the price for servicing, does it? A. It certainly does.

Q. Again I ask you—I want you to tell the Court the price [141] for servicing lumber. You have RMPR 26, Table 2 before you?

A. Yes, sir.

Q. Show me where it fixes the price of servicing lumber.

Mr. Hitchcock: Servicing or surfacing?

Mr. Hughes: Servicing or surfacing; planing lumber, put it that way.

A. If the lumber leaves the plant surfaced four sides this is the price that is charged.

Q. (By Mr. Hughes): That is for the sale of lumber? A. For the sale of lumber.

Q. If it is sold without being planed, it has one price and if it is sold after it is planed, it has another price, is that correct?

A. That is right.

Q. But there is nothing in 26 that fixes the price for servicing lumber, is that correct?

Mr. Hitchcock: I object to that at this point. This witness has already testified it was not correct. Even though this is cross-examination, I would like Mr. Rothfield to do a little of the testifying. I believe that that question was too leading; in fact, it was practically your own answer.

(Testimony of Joseph Rothfield.)

The Court: Overruled. Answer the question if you can, if you understand it. [142]

The Witness: Let me try to understand the question again. Put it up to me, Mr. Hughes.

Mr. Hughes: Read the question.

(Last question repeated by the reporter.)

A. I will leave that to you, Mr. Hughes. You have examined this table time and time again. You know what a piece of 2 by 4, S-4-S, is priced at. You were in the Office of Price Administration, and you know.

Q. (By Mr. Hughes): I want you to answer the question, if you please.

The Court: Answer the question if you can.

A. My answer is yes.

Q. (By Mr. Hughes): That this fixes a price for servicing lumber?

A. For surfacing—s-u-r-f-a-c-i-n-g.

Q. We will call it planing. This fixes the price for planing lumber?

A. That is right; that is sold under this Regulation.

Q. That is sold under this Regulation?

A. That is right.

Q. Does 539 fix the price for planing or surfacing lumber? [143]

A. Under certain conditions.

Q. You still insist that 26 fixes the price for servicing lumber?

A. That is right. That is the only one available.

(Testimony of Joseph Rothfield.)

Q. Mr. Rothfield, did you ever talk to any of these defendants—I mean Mr. Wyman—he is the only defendant now.

A. I have never talked to Mr. Wyman personally.

Q. Have you ever talked to anyone connected with the planing mill, personally?

A. Any talking that has been done by me in reference to this case has been done through you or through Mr. Hitchcock.

Q. You say the investigators have investigated M. A. Wyman? A. Yes, sir.

Q. The O.P.A. investigators? A. Yes, sir.

Q. Who were they?

A. They were Stockdale—Charles W. Stockdale, I believe is the correct name; and Edgar A. Foster.

Q. Are they the only two?

A. I think some time back—but I don't know whether it was in reference—I wouldn't say it was particularly on this case; a Charles H. Edwards.

Q. Anybody else that you know of? [144]

A. And Andrew H. Hitchcock, of course, our attorney.

Q. All of this happened during 1944 and '45, did it not? A. That is right.

Q. Is that correct?

A. That is correct.

Q. Did each of these gentlemen make a report on their findings? A. They have reported.

Q. Just answer the question, please: Did they make a report?

(Testimony of Joseph Rothfield.)

Mr. Hitchcock: I would like to object to that question at this time. I don't believe I went into that question on direct examination as to reports by other investigators and I believe it is therefore improper now.

The Court: Overruled. Did they make a report?

A. They have made several reports.

Q. (By Mr. Hughes): These three that you have mentioned? A. Yes.

Q. Each have made a report? A. Yes.

Q. On this matter? A. That is right.

Q. Have you read those reports? [145]

A. I have.

Q. Where are they now?

A. In the files of the Office of Price Administration.

Mr. Hughes: Mr. Hitchcock, I would like you to produce those reports.

The Witness: They are all considered confidential reports.

Mr. Hughes: I would like to see them, please.

Mr. Hitchcock: All right.

Mr. Hughes: Where is the other one?

Mr. Hitchcock: With respect to the report of Charles H. Edwards, who severed his connection with the Office of Price Control prior to the time I was there, I believe one paragraph of that report which was made——

Mr. Hughes: I am not asking you what the report contains. I am asking you—where is it; have you got it?

(Testimony of Joseph Rothfield.)

Mr. Hitchcock: We have that report but it deals with other matters. It is confidential and not a part of this case. I therefore object to introducing that. It deals with an investigation, a portion of which is still proceeding.

Mr. Hughes: I would like to see upon what basis this witness makes the statements that he has made.

Mr. Hitchcock: The witness came with the Office of Price Administration approximately at the same time I did. The other report was made prior to that time and the man had severed his connection with the agency at the time that we came in there. We know nothing about it other than the fact that there is a report.

The Court: What is that man's name?

Mr. Hitchcock: Edwards.

The Court: Did you ever see the report Mr. Edwards made?

The Witness: I read various reports of Mr. Edwards.

The Court: I mean concerning this matter.

The Witness: I can't recollect whether I read anything pertaining to this particular thing because the reports that I read had to do with another matter.

The Court: Whatever evidence that you have given here, has that been to any extent based upon the report of Mr. Edwards?

The Witness: Very—none whatever.

(Testimony of Joseph Rothfield.)

Mr. Hughes: None whatever. May I ask whether you are going to have Mr. Edwards [147] here?

Mr. Hitchcock: No.

Mr. Hughes: Or Mr. Foxter?

Mr. Hitchcock: No.

Mr. Hughes: Are you going to have the other gentleman——

Mr. Hitchcock: Stockdale?

Mr. Hughes: Stockdale—are you going to have any of those?

Mr. Hitchcock: No.

Q. (By Mr. Hitchcock): Was any of your testimony based upon Edwards' report or investigation? A. None whatever.

Mr. Hughes: In other words, you won't produce the Edwards' report?

Mr. Hitchcock: No. It is on another case.

Q. (By Mr. Hughes): Did you act on these two reports, now, of Mr. Stockdale and Mr. Foster?

A. I have acted on all of the facts as they are accumulated.

Q. As cumulated from what source?

A. Reports, information—confidential information and these invoices and those bills of lading.

Q. Information. Now, you are getting into something [148] else. Where did you get your information?

A. I think that is a matter of confidence. Certain matters of the government I understand are confidential.

(Testimony of Joseph Rothfield.)

Q. It was something told to you, is that correct?

A. No, sir.

Q. Well, it was something written to you, then?

A. My information is all from the facts as presented.

Q. Just from those invoices, is that correct?

A. As to the overcharges.

Q. Yes. Now, was any complaint ever made by any of the buyers from M. A. Wyman or the Granite Falls Planing Mill?

A. I would have to read over the files again to say yes or no.

Q. You know, as a matter of fact, you have never seen any complaint from any buyer from Mr. Wyman, don't you? You can answer that question.

A. In the main I would say no in this case.

Q. In the main. I say have you any? "Any"—do you understand what that means?

A. I can't recall from the files if there are any whatever.

Q. When I use the word "M. A. Wyman" I wish you to understand that I mean also the Wyman Mill Company and the M. A. Wyman Lumber Company; you understood that, didn't you? [149]

A. I understand it is all M. A. Wyman doing business as M. A. Wyman Lumber Company, M. A. Wyman doing business as the Wyman Mill, and M. A. Wyman.

Q. Now, MPR 539 was issued and made effective I think the same day, June 5, 1944, is that correct?

A. I would have to look at the records. It is in June, 1944. I can't recall exactly the date.

(Testimony of Joseph Rothfield.)

Q. Prior to that date, Supplementary Service Regulation 27 to 165—to Maximum Price Regulation 165—covered the planing charges, did it not?

A. Up to June 5, 1944, we would be governed under that Regulation.

Q. And that Supplementary Servicing Regulation 27 was supplanted by 539, is that correct?

A. That is right. 539 came next.

Q. Then Supplementary Service Order Number 27 came out, I think it was in April, 1944.

A. I wouldn't vouch for the date but I think you are about correct.

Q. And prior to that time the services for lumber was governed by Maximum Price Regulation 165, is that correct?

A. That is right.

Q. In other words, 165 was the Service Regulation covering the price for planing lumber in force prior to [150] April, 1944, that is correct, isn't it?

A. Well, I would have to examine that Regulation again to give you a correct answer. I wouldn't want to vouch my answer now on that because it is outmoded and has nothing to do with figuring these invoices. I was duty-bound to figure under 539, the Regulation in effect at the time of this shipment. I cannot vouch for anything previous to that. You are asking me a question that I can't vouch for. I won't try to retain it in my mind—I can't.

Q. You know 165 governed——

A. I don't know. It might have governed many services.

(Testimony of Joseph Rothfield.)

Q. Did it govern services for planing lumber?

A. I don't know.

Q. You don't know.

A. I wouldn't say I don't know. I don't want to answer that question because I would have to have the Regulation put before me to say yes.

Q. Supplementary Service Regulation 27 to 165 became first effective in April, 1944, do you know that?

A. The 27th—are you talking about—S-S-R 27?

Q. Yes.

A. It is approximately April, '44, I believe. I agree with you.

Q. Do you agree with me that 539 supplanted Supplementary [151] Service Order Number 27?

A. That is right.

Q. Was there any inhibition against a person owning a sawmill and a planing mill prior to the issuance of 539 in June?

A. What do you mean by inhibition?

Q. Well, was there any—

Mr. Hitchcock: I believe that that question is a little too general, if the Court please. We are dealing with specific facts.

Q. (By Mr. Hughes): What I wanted to show was that there was no Regulation prohibiting a mill—sawmill and planing mill, even if they were owned by the same person, to charge the rate for planing lumber as fixed by the regulations at that time; that is, prior to June, 1944.

The Court: Answer the question, if you can.

A. I can't answer that question.

(Testimony of Joseph Rothfield.)

The Court: Was there any regulation prohibiting one man from owning a planing mill and a sawmill?

Mr. Hitchcock: We have never objected to the ownership at all, if the Court please. It is the charges they made which hinges on the ownership.

The Court: At the time this corporation was formed was it in violation of any regulation for a man to own two?

Mr. Hitchcock: No.

The Court: No.

Mr. Hitchcock: Not at the time it was formed.

Q. (By Mr. Hughes): As I understand your testimony, Mr. Rothfield, your complaint is that the Granite Falls Planing Mill charged prices provided by 539 without getting permission from the OPA; is that the substance of it?

A. Will you re-state that question, please?

Q. As I understand your testimony, your chief complaint is that the Granite Falls Planing Mill charged prices fixed by 539 without getting permission from the OPA?

A. I have got to say M. A. Wyman in that case.

Mr. Hitchcock: If the Court please, I don't believe that that was the testimony at all.

The Court: He is asking whether that is his opinion or not.

A. (Continuing): It is my contention that M. A. Wyman Lumber Company charged that. You asked me the question and I gave you that answer.

(Testimony of Joseph Rothfield.)

Q. (By Mr. Hughes): Is there anything on those invoices showing that M. A. Wyman charged it?

A. These are invoices taken from the Office of M. A. Wyman. You know that.

Q. Is there anything on those invoices showing that M. A. Wyman charged for this planing?

A. Yes.

Q. Where is it?

A. There is the charge right there for servicing.

Q. Well, M. A. Wyman I said,—M. A. Wyman.

A. Right here.

Q. Where does it say M. A. Wyman?

A. It says "This lumber delivered to our plant by M. A. Wyman."

Q. Well, is that the only reason why you say that; is that the sole reason why you say that M. A. Wyman sold this? [154-a]

A. He certainly did.

Q. Why do you say that?

A. Because the bill of lading says that the M. A. Wyman Lumber Company shipped it.

Q. It doesn't say the M. A. Wyman Lumber Company sold it, does it?

A. You don't send a bill of lading unless you owned the lumber and sell it.

Q. Did you read this, what it says on each one of these invoices; have you read that?

A. Certainly.

Q. On the rough lumber?

A. That is his method of statement.

(Testimony of Joseph Rothfield.)

Q. That is what?

A. "This lumber delivered to the Granite Falls Planing Mill" which is true. The Granite Falls Planing Mill was 500 feet away from the Mill.

Q. "If any prices on this invoice exceed authorized ceiling prices, it is unintentional and proper adjustment will be made if called to our attention." Also there is this note, "This lumber delivered to Granite Falls Planing Mills, Inc., per your instructions to us."

A. Yes, that is right. I will grant that.

Q. Just a minute. "And to be milled and handled by them [155] in accordance with your instructions to them. They will invoice you direct for their charges. The car was billed out by them showing ourselves as shippers and consignors as follows:"

Now, from reading that do you still insist that that by some magic M. A. Wyman sold and delivered surfaced lumber?

A. I must state this, Mr. Hughes: that it is still M. A. Wyman, though Granite Falls shipped it. It is one and the same thing.

Q. Did you find any evidence that would sustain your contention that M. A. Wyman sold this lumber after it was planed?

A. Yes. They sold it surfaced four sides.

Q. Where does it say so?

A. These two bills show that.

Q. That bill says just the opposite, doesn't it; doesn't that bill say just the opposite to what you claim here on this M. A. Wyman Lumber Company

(Testimony of Joseph Rothfield.)

invoice; doesn't it state just the opposite to what you are saying? Does it? A. No.

Q. Doesn't it say there that this lumber is shipped,—“is delivered to Granite Falls per your instructions.” Do you believe that? [156]

A. I do not.

Q. Oh, you don't believe that,—that is it?

A. Yes.

Q. Then you are not relying upon what is in these invoices, are you?

A. No, I am relying upon what is shipped through these invoices. These invoices are an evasive practice under Section 16.

Q. The invoice is an evasive practice? What is evasive about it?

A. Because you shipped 2 by 4's, S-4-S, and 2 by 8's, and 2 by 10's.

Q. Yes; that is right. We shipped that lumber green, didn't we, as shown by the invoices?

A. You shipped it green S-4-S. The bill of lading shows what you shipped.

Q. We only sold green rough lumber, is that correct, as shown by the invoices?

A. As shown by these invoices, you sold green surfaced S-4-S by the combination of two invoices.

Q. You say that. Where does it show on the invoices such as you claim?

You say your information is obtained from these invoices. Now, will you just show the Court from either of these invoices what you claim? [157]

(Testimony of Joseph Rothfield.)

A. These invoices bear the same date, July 17th. They bear the same car number. They bear the same volume of shipment,—33,100 feet of 2 by 6, 2 by 8, 2 by 10, and 2 by 12 green surfaced four sides. That is what left in that shipment.

Q. That is what?

A. That is what Houston Lumber Company got from M. A. Wyman,—the one I am looking at right now.

Q. Doesn't this tell Wyman Lumber Company to send this rough green to the planing mill to be planed; is that what it says?

A. This is a statement on the bottom of the invoice.

Q. Isn't that what it says?

A. I am stating that Houston Lumber Company got 33,100 feet of 2 by 6, 2 by 8, 2 by 12, surfaced four sides.

Q. Yes; they got it.

A. They got it from M. A. Wyman, doing business as M. A. Wyman Lumber Company.

Q. They got it from M. A. Wyman?

A. Yes, sir; doing business as M. A. Wyman Lumber Company. This is evasive; this is trickery.

Q. I see. You have no information upon which you can base that statement except what is shown by the invoices?

A. I have the information. [158]

Q. What is it?

A. 539 states that no sawmill can plane its own lumber under the Regulation 539. And Mr. Wyman

(Testimony of Joseph Rothfield.)

knows it and you know it. You were the litigation attorney at the time.

The Court: Wait, wait. Don't get into any argument.

The Witness: That is the truth. That is the Regulation.

Q. (By Mr. Hughes): It says also that even though one man may own both, under certain conditions they can get permission, doesn't it?

A. To charge custom mill prices except on their own lumber—no matter what—if they have the slightest interest in it, they can't do it. You were our attorney at the time and you know it. You are trying to break me down on it and I won't budge.

Mr. Hitchcock: Mr. Rothfield, that is all right. Just calm yourself. I believe this cross-examination is going far afield. I haven't objected. However, he has asked the same question over and over again. Counsel insists upon re-asking it. I would like to have just a little bit of limit to it.

Mr. Rothfield, I want to answer the questions [159] and contain yourself, please. [160]

Q. Do you mean to say now that the charge for planing lumber was covered by 26?

A. Yes, sir.

Q. And there was no service regulation giving the price of planing lumber? [162]

A. In 1944, you are asking?

Q. Yes, in 1944, if you know.

A. Douglas fir lumber comes under RMPR 26.

(Testimony of Joseph Rothfield.)

Q. That is the sale of lumber?

A. And the surfacing of it, too.

Q. Let me ask it this way: 539, you admit, covers services for planing lumber, doesn't it?

A. Yes, sir.

Q. And that went into effect June 5, 1944, didn't it?

A. Thereabouts.

Q. And prior to that time we had supplemental service regulations 27 to maximum price regulation 165, didn't we?

A. SSR 27, yes.

Q. That was SSR 27 to 165, wasn't it?

A. I think so.

Q. That went into effect, as you said this morning, about April some time? I think it was April 16, but I am not sure of the date, 1944.

A. Either April or May of 1944.

Q. Prior to that time it was governed by 165, wasn't it? In other words, supplementary order 27 was supplementary?

A. Yes.

Q. To 165, wasn't it?

A. I will say yes.

Q. So, then, the service regulations were covered by [163] 165 prior to the issuance of supplemental service order 27?

A. I will say yes. There was a planing provision for lumber, but depending upon what lumber.

Q. They used 539 without getting permission to do so. Is that correct?

A. I would say that is correct. [165]

Q. And if they had had permission to do so, there would be no question for this complaint. Is that correct?

A. I can state here,—

(Testimony of Joseph Rothfield.)

Q. I just asked you that.

A. I want to give the answer in my own way, if you will permit me, sir.

Q. Answer the question. That is all.

A. I will answer the question. Never in history, in the Office of Price Administration, have they authorized a permit to any one to charge 539 prices on the lumber in which they have a financial interest.

Mr. Hughes: I ask that that answer be stricken, and the witness be required to answer my question.

The Court: It may be stricken. Answer the question.

A. I beg your pardon?

Q. (By Mr. Hughes): If the M. A. Wyman Lumber Company had no financial interest in the Granite Falls Planing Mill would there be any cause for complaint here today, under 539?

A. If the M. A. Wyman Company had a financial interest in any way there in the firm, they could not.

Q. If he hadn't, you say?

A. If he hadn't? State the question again, sir.

Q. If M. A. Wyman had no financial interest in the Granite Falls Planing Mill during 1944, would there be any [166] cause for complaint?

Mr. Hitchcock: I believe we are getting into an assumption here, and I would like to object for that reason.

The Court: He may answer.

(Testimony of Joseph Rothfield.)

A. Let me think, now. I can best answer that question by saying——

Q. (By Mr. Hughes): Just a minute. Just answer it, please, yes or no.

The Court: Answer yes or no and then explain if you care to.

A. No, providing that the Granite Falls did not plane any lumber in which they had an interest.

Q. (By Mr. Hughes): Yes. If Granite Falls had planed the lumber and Wyman had no interest in it, then there would be no cause for complaint, would there?

A. If Wyman had no interest in the Granite Falls Planing Mill.

Q. How is that? I didn't hear?

A. If he had no interest in the Granite Falls Planing Mill.

Q. What?

A. No financial interest in any way.

Q. Then the charge——

A. (Interposing): Or owned the lumber, either way.

Q. Then the charges would have been correct?

A. Not in their entirety.

Q. What?

A. There is still a little difference.

Q. You mean there would be no cause for your complaint, there would be no case here today before the Court if Wyman had had no interest in that planing mill?

A. Providing that planing mill was properly authorized to charge these prices.

(Testimony of Joseph Rothfield.)

Q. Yes, that is it. In other words, 539 sets out the charge for planing lumber by a custom mill, and it is defined that a custom mill cannot operate and charge prices under 539 if the owner of the saw-mill has a substantial interest in the planing mill?

A. Or vice versa.

Q. But 539 goes on further, doesn't it, and states that there are certain conditions, even where the ownership is in the same party, an application may be granted under certain conditions, doesn't it?

A. That is right.

Q. I am not trying to mix you up. I am just trying to get straight on that.

A. That is all right. I will answer you to the best of my knowledge.

Q. That has to be done by an application to the OPA? A. Right. [168]

Q. Now, do you know whether an application was made by the Granite Falls Planing Mill to the OPA for the privilege of operating under 539?

A. I think that can be best answered by the department that takes care of that.

Q. I ask you: Do you know of any letter of application, or have you seen a letter of application by the Granite Falls Planing Mill addressed to the Office of Price Administration, asking for permission to operate under 539?

A. No, I never saw that application.

Q. You have never seen it?

A. No, sir.

Q. You say you have investigated this case?

A. I haven't seen the application to operate under 539.

(Testimony of Joseph Rothfield.)

Q. You have not investigated any of these facts that tend to show any justification for this charge, have you? A. I have investigated.

Q. You didn't investigate that? You do not know about that phase of it, do you?

A. I say that there was no application from M. A. Wyman to operate a custom mill under MP 539.

Q. I said Granite Falls. I didn't say from Wyman.

A. Or Granite Falls, under 539.

Q. Is there, under any other regulation? [169]

A. I have seen correspondence regarding SSR-27.

Q. Twenty-seven, the third of May was the date that supplemental service order 27 came into effect, wasn't it? A. That is right.

Q. May 3? A. Yes.

Q. And you have seen that application?

A. I have seen that letter.

Q. Of application? A. Yes, sir.

Q. For permission to operate under 27, which contains substantially the same provisions as 539?

A. Approximately.

Q. And do you know what became of that application?

Mr. Hitchcock: If the Court please, the man who handles that is here. I have a man here who will be our next witness, and he will have all the information on that, and I think he has a copy of the letter and we will be glad to introduce the same in evidence.

(Testimony of Joseph Rothfield.)

The Court: Answer the question.

The Witness: Will you re-state the question, Mr. Hughes?

Q. (By Mr. Hughes): Have you read that letter? A. I have read that letter.

(Letter marked Defendants' Exhibit A-2 for identification.) [170]

Q. Handing you defendants' exhibit A-2, I will ask you if that is the application that you saw?

A. I think this is substantially the letter I read in the files.

Q. In whose office?

A. In our office,—May 3, 1944.

Q. In Mr. Wurnsted's office or yours?

A. Mr. Wurnsted's office.

Q. That is the application by the Granite Falls Planing Mills dated May 3, 1944? A. Yes.

Q. Addressed to the Regional Office of Price Administration, for permission to operate under regulation—under MPR-165, and supplemental regulation 27, effective May 3, 1944?

A. That is right.

Mr. Hughes: I offer that.

Q. Do you know what was done with that application?

A. That is not in my department, sir.

Q. I say you do not know what was done with it?

A. The answer is it is not in my department, so what was done with the application—

Q. I will ask you if you—

(Testimony of Joseph Rothfield.)

A. I can't answer that. All I can say to that is: I don't know. [171]

Q. You have discussed this with Mr. Wurnsted, haven't you? A. Yes.

Q. When?

A. Several times, the same as you have; discussed it several times.

Mr. Hitchcock: I have no objection to that.

The Court: This may be received.

(The document previously marked defendant's exhibit A-2 for identification was admitted in evidence.)

DEFENDANT'S EXHIBIT A-2

[Letterhead Granite Falls Planing Mill, Inc.]

May 3, 1944.

Regional Office
Office of Price Administration
White Henry Stuart Bldg.,
Seattle, Washington

Gentlemen:

Reference: MPR 165 Supp. Service

Reg. 27—Effective May 3, 1944.

Under Part 1499.2258 Section 3 Paragraph (b), the undersigned hereby applies for authority to operate under this regulation, and offers the following facts in support.

Our plant is located near Granite Falls, Washington. Our equipment consists of a steam powered

(Testimony of Joseph Rothfield.)

lumber planer and a loading and unloading crane. At Hartford, Washington, which is our Railroad loading point, we have a platform and unloading and loading crane. This is located approximately 12 miles from our plant, and the OPA lumber division has given us authority to charge \$1.50 per M' truck charge.

There are many small Rough tie mills in this neighborhood from which we buy Rough Boards and Dimension and surface it to make it available for the war effort. If we did not operate this plant, this Rough "side cut" would for the most part be burned as waste.

The war demand for surfaced lumber is exceedingly great, but little Rough lumber is bought and as there is no other plant of this kind in this vicinity, we believe we are contributing something to the war effort. Our capacity is approximately 40 M Ft. per day.

As we do not have any resaw or equipment to break down larger sizes, any lumber handled by us is at a saving over those plants that do charge for breaking down larger sizes and also surfacing the product.

We hope you will give this your early consideration.

Yours very truly,

GRANITE FALLS PLANING
MILL, INC.

By /s/ M. H. WYMAN.

MH:s

Admitted Sept. 27, 1946.

(Testimony of Joseph Rothfield.)

Q. (By Mr. Hughes): Handing you supplemental service regulation 27 to maximum price regulation 165, that became effective on May 3, 1944, didn't it? A. That is right.

Q. And the consideration for that reads as follows:—I want you to see if I read it correctly. “ ‘Custom mills’ are specially defined in the regulation. Some persons who do not come within the scope of that definition may not be performing custom mill service. Such persons may apply to the nearest regional office of Price Administration for permission to charge the maximum prices provided by this regulation. Such permission will be granted in those cases in which it is found that the authorization: [172]

(1) Will result in a greater production of surfaced boards or dimension of kiln-dried lumber.

(2) Will not encourage producing sawmills having manufacturing and kiln-drying facilities to ship their lumber green, partially dry, rough or in thicknesses over 2”.

(3) Will provide necessary milling services which can not reasonably be supplied by producing mills, or by custom mills qualifying under paragraph (a).

(4) Will not result in unnecessarily increasing the cost of finished lumber to the ultimate consumer.”

Does that regulation so provide?

A. Let's refer to the regulation.

Q. That is 27?

(Testimony of Joseph Rothfield.)

A. Yes. I don't know if the consideration applies. That is the regulation, although——

Q. That is what it states?

A. I will admit that. It goes a little further, too, doesn't it? That same consideration goes a little further, I believe.

Q. I don't want to skip anything: "If such permission is refused, the operator must use the charges provided in the appropriate lumber price regulation." A. That is right.

Q. If it is refused? A. Correct. [173]

Q. Did you investigate to find out whether the Granite Falls Planing Mill Company qualified under these provisions?

A. I don't have to go back into that part. All I was concerned with——

Q. Just answer my question: Did you investigate the Granite Falls Planing Mill to find out whether they could qualify under these provisions, these four I have just read?

A. I am interested in——

Q. (Interposing): You answer the question.

A. You are talking——

The Court: Wait a minute. Answer the question and don't argue so much. Answer his question.

The Witness: State the question again.

Q. (By Mr. Hughes): Did you investigate the Granite Falls Planing Mill?

A. I didn't have to go back into that part. All I was concerned with——

(Testimony of Joseph Rothfield.)

Q. (Interposing): Just answer my question. Did you investigate the Granite Falls Planing Mill to find out whether they could qualify under these provisions, these four I have just read?

A. I am interested in——

Q. (Interposing): You answer the question.

A. You are talking——

The Court: Wait a minute! Answer the question and [174] don't argue so much. Answer the question.

The Witness: State the question again.

Q. (By Mr. Hughes): Did you investigate the Granite Falls Planing Mill to find out whether they could qualify under these four provisions?

A. Yes.

Q. You did investigate? A. Yes, sir.

Q. What investigation did you make?

A. Through the regular channels, that the plant was under one roof.

Q. Through regular channels. Did you investigate it yourself?

A. Through our department.

Q. Well, I want to ask you——

A. (Interposing): I did not.

Q. What did you find yourself?

A. I didn't go out to the plant, if that is what you want to know.

Q. Did you investigate yourself?

A. Our department did. I didn't investigate it at that particular moment you are asking for.

(Testimony of Joseph Rothfield.)

Q. And you did not know whether they could qualify under these provisions or not, at that particular time, did you? [175]

A. At that particular time, I will say no.

Q. If the Granite Falls Planing Mill had been unable to surface this lumber, where else could it have been done in that community?

Mr. Hitchcock: I object to that unless he qualifies it as to his own knowledge.

Q. (By Mr. Hughes): Yes, if he knows.

The Court: Answer if you know.

A. I don't know.

Q. (By Mr. Hughes): You don't know?

A. Except I do know that Granite Falls and the Wyman Lumber Company is one institution.

Q. You stick to that, do you?

A. I certainly do.

Q. You did not investigate, though, to find out whether there was a competing mill with the Granite Falls Planing Mill?

A. I didn't go seeking out other mills.

Q. Did you ever hear of the Walton Lumber Company of Everett?

A. Yes, and the Warren Lumber Company and another over at Anacote.

Q. I am speaking of Everett now. How far is Granite Falls from Everett?

A. Possibly ten or twelve miles, roughly. [176]

Q. Is there a planing mill nearer to Everett than Granite Falls?

A. I don't know.

Q. You don't know?

(Testimony of Joseph Rothfield.)

A. I don't like to be confined to the Everett Mill, but I know Walton Lumber Company are in Everett, about twelve miles from Granite Falls.

Q. MPR-539 contains the same requirements as 165, for custom milling, doesn't it?

A. SSR-27 to 165?

Q. Yes.

A. Well, approximately, although there might be a little different wording.

Q. As far as you know, they are the same?

A. About the same. That can best be determined by the department that has charge of making the regulations, which would not be through the Price Division.

Q. You do know, however, if the buyer had bought and had this planing service done at Everett, or the nearest point to the mill, it would have cost him more than it actually cost him for the Granite Falls Mill to do it?

Mr. Hitchcock: I believe that is wandering far afield and asking him for an opinion, and for a conclusion in addition. [177]

Mr. Hughes: If your Honor please, I am just trying to show that if this planing had been done by any other mill, they would have been entitled to charge custom milling services for it.

The Court: The Court had ruled. Proceed.

Q. (By Mr. Hughes): Now, you say the Granite Falls Planing Mill serviced lumber for M. A. Wyman. You say that? A. Right.

(Testimony of Joseph Rothfield.)

Q. And you base that, not on the invoices, but on other information?

A. I base that on the invoices and the position of the plant.

Q. You base that on the invoices?

A. Yes.

Q. And that is all you did base it on?

A. And the billings.

Q. You claim that this was sold in excess of 539?

A. I claim it was sold in excess of RMPR-26.

Q. Where do the invoices show that M. A. Wyman surfaced this lumber?

A. Because these invoices came from M. A. Wyman Lumber Company.

Q. They were ordered to be shipped that way, weren't they?

A. They were ordered,—If you take the typing on [178] the invoice, I would say yes.

Q. I believe you said that this plaintiff's exhibit 6, on the right side here, showed the overcharges, the total amount that you figured out. Is that correct?

A. That is right.

Q. And you say that shows the overcharge after taking out the cartage?

A. That is right.

Q. You are sure of that?

A. I am sure of that.

Q. And where did you figure that amount?

A. On those invoices?

Q. Yes. What is the overcharge?

A. \$184.44.

(Testimony of Joseph Rothfield.)

Q. That is what you found was the overcharge?

A. Yes.

Q. That doesn't show up on this exhibit 6, does it?

A. You have got exhibit 6. That is part of exhibit 6 right there.

Q. Exhibit 6 of page 4, your honor.

A. The fourth one down.

Q. I am speaking of the figure in this place, is what I am referring to. That shows \$237.93.

A. That is taking off the cartage. This is the figure right there. [179]

Q. That is not correct, then? That statement does not purport to be correct?

A. The recapitulation takes care of that.

Redirect Examination

By Mr. Hitchcock:

Q. Do you know what regulation the defendant was subjected to, with reference to the surfacing of lumber? Do you know whether it was 539 or SS27, were in effect from July to December, 1944?

A. Yes.

Q. Which one was in effect?

A. MPR-539. [180]

WILLIAM C. WURNSTED

called and sworn on behalf of the plaintiff, testified as follows:

Direct Examination

By Mr. Hitchcock:

Q. Will you state your name, please?

A. William C. Wurnsted.

Q. What is your occupation?

A. I am head of the building materials and lumber division of Price,—in the Seattle District Office of the Price Administration.

Q. How long have you been employed and what are your duties?

A. Well, I have been employed there since September, 1942. My duties are, at the present time, the dissemination of information, naturally, running the division that I am head of, contacting the public on items in regard to—Or discussions in regard to the OPA regulations. [182]

Q. (By Mr. Hitchcock): Go ahead.

A. Then he explained to me that there were a lot of mills in the district that had no planing facilities, and that there was a war on and we needed lumber, and needed it badly,—and I certainly agreed with him that we did need lumber and needed it badly. I think I said to him that if he had the additional capacity for surfacing lumber, and wanted to make an application under 165, for the price that he made, that he might be permitted to do some custom milling on lumber other than his own, but there was this 165 that prohibited it at that time.

(Testimony of William C. Wurnsted.)

Q. When was that?

Q. (By Mr. Hughes): What Wyman did you talk to?

A. I talked to Mr. Wyman, Sr., and that is Mr. M. A. Wyman.

Q. (By Mr. Hitchcock): All right. Go ahead.

A. A little later on and I believe during our conversation, he also explained to me how he acquired the mill, and that the thing had been a losing proposition. [185]

Q. That is the Wyman Mill you are referring to?

A. That is right.

Mr. Hughes: Are you speaking of the planing mill or the Wyman Mill?

Mr. Hitchcock: The Wyman mill.

The Witness: A little later on his son came in. I think it was at that time. In fact, I am certain of it, and we agreed that we would go up and check the plant.

Q. (By Mr. Hughes): That is up to the planing mill?

A. That is take the whole industry, the whole plant, with the idea in mind of establishing a rate under 165 that he could use, providing we could establish this new surfacing charge; but I explained most emphatically to him that I could not add new manufacturing or planing charges that a custom mill might charge to any lumber which he may manufacture of his own. Now, that is my recollection of the thing, to the best of my ability.

(Testimony of William C. Wurnsted.)

Q. (By Mr. Hitchcock): Now, Mr. Wurnsted, pursuant to this conversation, did the defendant ever file an application for such a permit?

A. Well, in the interim,—Let me explain it this way: supplemental regulation 27 to 165 was developed. I would like to say why it was developed.

Q. Go right ahead.

Q. (By Mr. Hughes): Did you help develop it?

A. I did not.

Q. Do you know why it was developed, from the statement of the consideration and other reasons in connection with your duties?

Mr. Hughes: Well, I object to that.

The Court: Well, I think the Court can read the considerations, yes. Go ahead. I don't care about that.

Q. (By Mr. Wyman): Pursuant to this conversation, will you go ahead and state whether or not an application was filed under SR 27?

A. Yes, an application was filed.

Q. When? A. On May 3.

Q. What year? A. 1944.

Q. And at that time, under the regulations, that is 27, were there certain requirements that should be in that application? A. Oh, yes.

Q. What were those requirements?

A. Primarily, one of the requirements was that the applicant had no interest in a sawmill?

Q. I mean, did the application set forth this fact?

(Testimony of William C. Wurnsted.)

A. That is right, the application very specifically, under, I believe, section 3, explains what a custom mill is [187] and section B,—or section 2 of section,—That is paragraph 2 of section 3 outlines one of the requirements, and it also explains what lumber prices, these prices established herein, can be applied on; that is the species of the lumbers. B goes in great detail as to operators not qualifying under the paragraph A.

Q. Was this application in proper form under these provisions? Did it say anything about ownership? A. No, it did not.

Q. Should that have been in there at that time?

A. Yes, it should have been in there at that time.

Q. With reference to SR-27, what period of time did that regulation cover?

A. Number 27 went into effect on—Was issued April 18 and became effective May 3.

Q. 1944?

A. 1944. And was superceded by MPR 539 on June 5, 1944.

Q. Could any custom milling price have been charged by the defendant prior to the time that authority was acted upon, under either of these regulations?

Mr. Hughes: What was the question?

Q. (By Mr. Hitchcock): Could custom mills charges have been charged under either of these regulations by the applicant, the Granite Falls Planing Mill, prior to authorization [188] pursuant to the application? A. No.

(Testimony of William C. Wurnsted.)

Q. Do you know——

Mr. Hughes: Give me the figures upon which you base that answer.

A. No,—The applicant——

Q. Well, could they or could they not?

The Court: Better repeat the question.

Q. (By Mr. Hitchcock): Could custom milling rates under either of these regulations have been charged by the applicant, that is the Granite Falls Planing Mill, until the authority had been granted?

A. No, positively.

Q. Did MPR 539 go into effect shortly thereafter?

A. It went into effect June 5, 1944.

Q. Did MPR 539 contain several similar provisions with reference to charges in custom milling?

A. Yes, that is right.

Q. Was any application ever filed under MPR 539?

A. Not to my knowledge.

Q. Now, do you know of your own knowledge what what regulations governed customs milling, surfacing, on Douglas fir, during 1944, from July to December,—customs milling?

A. MPR 539.

Q. And do you know what regulation governed surfacing [189] of Douglas fir during 1944? Did any other regulation cover that?

A. If the surfacing was done by a custom mill, properly licensed, 539 was applicable. If the surfacing was done by any one else, it was subject to MPR-29. [190]

(Testimony of William C. Wurnsted.)

Cross-Examination

By Mr. Hughes:

Q. You were formerly in the lumber business here in Seattle, weren't you? A. Yes, sir.

Q. That was prior to your employment by the OPA? A. Yes, sir.

Q. And you have been here for a great many years?

A. That is right; since about 1919.

Q. Did you receive an application from the Granite Falls Planing Mill dated May 3, 1944, to operate under MPR-165, under that service regulation 27? A. I did.

Q. And that is the same as 539 now?

A. No, I wouldn't say it was the same.

Q. Substantially the same? [196]

A. Yes, the regulations are substantially the same. Our price at that time was specifically made under 27 to 165.

Q. And it just happens to be on May 3rd, the same date that 27 came into effect?

A. I believe I saw to it that he got a copy of that 27. I am not sure.

Q. Now, handing you defendant's exhibit A-2, I will ask you if that is the application that you received on or about May 3, 1944?

A. Yes, that is it.

Q. That was signed by the Granite Falls Planing Mill by H. M. Wyman?

A. That is right, by M. H. Wyman.

(Testimony of William C. Wurnsted.)

Q. And it is addressed to the Regional Office, Office of Price Administration, Seattle, Washington?

A. That is right.

Q. And that is the address of the District Office of the OPA?

A. That is the address of the District Office, but not the Regional Office. It is addressed to the Regional Office, by the way.

Q. But he had it addressed to Seattle instead of San Francisco?

A. That is right. [197]

Q. How did it happen to reach your desk?

A. Well, through the usual course of mail.

Q. You handle that kind of business, these applications, do you?

A. That is right. That is it comes to my desk.

Q. Was that application discussed by you and M. H. Wyman on behalf of the Granite Falls Planning Mill?

A. Not that I remember.

Q. You don't remember?

A. No.

Q. You don't remember any discussion between you and M. H. Wyman?

A. Other than the fact that,—But I do remember discussing the application with him. My discussion with M. H. Wyman was to the effect that we were going out to the mill.

Q. What are you reading from there?

A. It is a card from Mr. M. H. Wyman. If I remember, M. A. Wyman Lumber Company, that is all. Just a few notes of my own.

Q. You say you did not have any discussion with M. H. Wyman at all?

(Testimony of William C. Wurnsted.)

A. I don't remember discussing the application with Mr. Wyman at all. I did make the arrangement with him. That I was going to the sawmill with him. [198]

Q. You did tell him that?

A. I did tell him that.

Q. And do you remember H. M. Wyman, this young man sitting right here?

A. Even now, I wouldn't be sure whether that is M. H. Wyman.

Q. Do you remember this young man coming to your office and bringing that application?

A. I wouldn't say that was the young man. It was M. H. Wyman that is the man that gave me the card.

Q. This happens to be M. H. Wyman sitting right here. He is the one that gave you the letter, is he?

A. I don't know.

Q. You don't remember how you received it?

A. No, sir.

Q. But you did receive it on or about that date?

A. Yes.

Q. I think you stated this morning you discussed this with M. A. Wyman?

A. That is right.

Q. Didn't you take this application up to the office, which happened to be in the same building, and held this application in your hand and introduced yourself to M. A. Wyman?

A. No.

Q. Just a letter——

A. I had this other letter from Lew Chervais in my hand.

(Testimony of William C. Wurnsted.)

Q. But you didn't bring this letter of May 3rd?

A. Yes, sir.

Q. And no discussion was had with M. A. or M. H. Wyman, either one?

A. I don't remember.

Q. You don't remember walking up to the office to discuss it with them?

A. I discussed Mr. Chervais' letter with M. A. Wyman.

Q. You discussed Mr. Chervais' letter with M. A. Wyman? A. That is right.

Q. And he is the only one that you talked to?

A. That is right.

Q. You are sure of that? That is as well as your memory serves you? A. Yes, sir.

Q. But you may have forgotten what happened?

A. I am pretty sure of that.

Q. Now, did you tell Mr.—You say you told M. A. Wyman that you would go up to the mill and look it over and see what could be done?

A. Yes, sir; I did.

Q. And you told him you would let him know?

A. No. It went a little farther than that. I told [200] him that——

Q. What was the date of that, about?

A. Oh, it was some time—I think the time when I mentioned going to the plant, to the mill, with him was at the time I saw that card at his office.

Q. And when was that? Try and fix the time.

A. Well, approximately right shortly after I received that letter from Mr. Chervais.

(Testimony of William C. Wurnsted.)

Q. That letter is dated March 3rd, isn't it, 1944?

A. Yes, I believe that is what it is.

Q. And you think you were there shortly after you received that letter?

A. Yes, that is right because I had a specific job to do, according to that letter.

Q. Did you ever make another trip to that office? A. No, sir; I never.

Q. And you don't remember anybody discussing this letter with you after May third?

A. No, sir.

Q. You remember talking to me about this a couple of weeks ago, don't you? A. Yes.

Q. You came down and talked to me, just what happened? A. Yes.

Q. Yes. I said I would like to know just what [201] happened?

A. I told you very frankly that I would have to go over my file in order that I could refresh my memory. If I remember, that is exactly what I said to you.

Q. That is right. And then you went over your file and had another conference with me. You wouldn't talk to me unless some one else was present?

A. To my mind, that conversation was——

Q. I just asked you the question. Isn't that a fact? A. Repeat the question.

Q. I had another conference with you?

A. You did.

(Testimony of William C. Wurnsted.)

Q. In which you would only talk to me in Mr. Hitchcock's presence? A. That is right.

Q. And at that time you said Mr. Hitchcock would have to be present? A. Yes.

Q. And I said I would just like to know what the facts are? Do you remember that?

A. Yes.

Q. And you told me you didn't remember except this: That you took this application upstairs and you talked to M. A. Wyman, and M. A. Wyman said, "I don't know a thing about it. You will have to see my son." And he took you [202] in and introduced you to his son?

A. I think Mr. Hitchcock objected and wouldn't let me answer the question.

Q. You did say that, didn't you?

A. Never.

Q. And you told me frankly that you really didn't remember what did happen. Isn't that the fact?

A. I will try to see if I can think of the words said, if I said anything.

Q. Well, that was the substance of it, wasn't it?

A. No, that is too broad a statement. I wouldn't admit that under any circumstances.

Q. As a matter of fact, you have never told me a lot of this testimony you have given here today?

A. That is a fact. I really didn't.

Q. You didn't tell me at all about that?

A. That is right. [203]

(Testimony of William C. Wurnsted.)

Q. (By Mr. Hughes): Now, Granite Falls is about 40 miles from here, isn't it?

A. That is right.

Q. And didn't H. M. Wyman tell you that he would take you out there to see the mill?

A. Yes.

Q. So you did talk to M. H. Wyman, didn't you?

A. Yes, I admit I did talk to him.

Q. After you received this letter of application?

A. No, sir; I don't know whether I talked to him after the application, from memory right now, as I said before in my statement. I think M. H. Wyman came into the office shortly after—just about the time I had my discussion with his dad, because if I remember correctly his dad introduced me to him, and it was at that time that we made the arrangement to go out to the mill; yes, sir.

Q. What were you going out to the mill for?

A. I wanted to see what kind of a plant it was, and—I had one other definite reason. We were at war and if he had any extra capacity left for surfacing, and if it could be arranged that he could get permission to surface some of this green lumber that the other lumber mills had no facilities for surfacing, and handle it strictly in the capacity of a customs miller, on lumber other than his own, I was perfectly willing to do everything I could towards accomplishing this end. [204]

Q. He wouldn't have to get your permission if he was working on lumber he didn't manufacture, would he?

(Testimony of William C. Wurnsted.)

A. He certainly would, for three reasons.

Q. Listen. Couldn't he operate under 539?

A. No, sir, because he owned the sawmill and was cutting logs.

Q. If he hadn't owned the sawmill and didn't furnish his own lumber, there is no reason why he should consult you whether he could operate under 539, was there?

A. Oh, yes. He had a joint ownership with the sawmill. He knew that.

Q. How many times did M. H. Wyman call you and tell you he would be glad to take you up?

A. Once, I remember.

Q. Didn't he tell you he went up about twice a week? A. Yes.

Q. And he would take you up any time you wanted to go? A. Yes.

Q. And he called you to go up with him?

A. Yes.

Q. And you couldn't go? A. I couldn't go.

Q. Didn't he tell you he might be able to go some other time? A. That is right.

Q. Did you ever call him?

A. No, sir; and he never called me.

Q. You never did visit the Granite Falls Planing Mill? A. No, sir; I did not.

Q. You never did? A. No, sir.

Q. Didn't you say you received instructions from Lewis Gervais to inspect the mill?

A. I didn't have to go out to the mill. I went back and talked to Mr. Wyman. I told him what

(Testimony of William C. Wurnsted.)

was what. That is all. I don't inspect mills under any circumstances.

Q. All right. What did you do with this application made on May 3, 1944?

A. Well, it laid on my desk, I imagine, together with a lot of other work, came to my attention again eventually. By that time we had MPR-539, which changed things materially and the application was, therefore, no good, since it would have to be made under 539 rather than supplemental regulation 27. So I called up Wyman.

Q. You called him up?

A. I called up the company.

Q. Which Wyman? [206]

A. I called up the M. A. Wyman Lumber Company. [207]

Q. What did you finally do with the application?

A. I figured that—I left my——

Q. I say what did you finally do? I didn't ask you what you figured. I asked you what you finally did with the application.

A. I imagine it was filed away.

Q. And that was all that was done with it?

A. That was all that was done with it, apparently.

Q. Nothing was ever done with it after that?

A. That is right.

Q. (By the Court): Mr. Witness, when you say you called the Wyman Lumber Company, did you talk to anybody there on that occasion?

(Testimony of William C. Wurnsted.)

A. No, sir. I talked to the girl there, because I asked for M. H., and I believed I mentioned the fact that I was going to the mill with him; and her reply was to the effect that M. H. was in the house or that he was ill, or that there was some reason why he couldn't be there. I said "I am calling him up in regard to the trip." I said, "I was going to make with him to the mill." That is all I remember about it, Judge.

The Court: All right.

Q. (By Mr. Hughes): Handing you defendant's exhibit A-3, I will ask you if that is your signature? [208]

A. Yes, sir; that is my signature.

Q. And you wrote that, addressed to the Granite Falls Planing Mill?

A. That is right.

Q. And what is the date of that?

A. That is dated May 5, 1945.

Q. That is a year and two days after you received the application?

A. That is right. I had orders to write that letter, instructions.

Q. Instructions from whom?

Mr. Hitchcock: That is all right. Admit it.

The Court: It may be admitted.

(Letter admitted in evidence and marked defendant's exhibit A-3.)

(Testimony of William C. Wurnsted.)

DEFENDANTS' EXHIBIT A-3
[Letterhead Office of Price Administration]

In Reply Refer to: SSe:WCW (P)

May 5, 1945

Granite Falls Planing Mill, Inc.

Box 237

Granite Falls, Washington

Attention: M. H. Wyman

Dear Mr. Wyman:

We are returning herewith your letter of application of May 3, 1944, in which you made application under Supplementary Service Regulation 27 to Maximum Price Regulation 165 to qualify as a custom milling plant.

I discussed this application with you shortly after receipt of this application with the idea in mind of inspecting the mill. This inspection was never made inasmuch as I never heard from you regarding this matter, and the further fact that on June 5, 1944, Maximum Price Regulation 539 became effective superseding Supplementary Service Regulation 27 to Maximum Price Regulation 165.

This new Regulation on custom milling and kiln drying of western softwoods changed the qualifying requirements of the original order to a certain extent and outlined specifically the information which should be provided in all instances where a

(Testimony of William C. Wurnsted.)

mill does not qualify as was then outlined in Section 4 of Maximum Price Regulation 539.

Therefore, inasmuch as your application will not meet with the requirements outlined in Maximum Price Regulation 539, we are returning it to you.

Very truly yours,

REED C. MILLS

District Price Executive

/s/ WM. C. WURNSTED

District Merchandise

Specialist

1 Encl. Your application.

Copy to: Mr. A. H. Hitchcock, Room 4451

Admitted Sept. 27, 1946.

A. From Mr. Foster.

Q. You had instructions from Mr. Foster?

A. Yes, sir.

Q. Have you got those instructions?

A. He just told me, he says, "You better return that application." And that is what I did.

Q. (By Mr. Hughes): Now, that letter was the first and only notification you ever gave to the Granite Falls Planing Mill, wasn't it?

A. So far as that application was concerned, yes, sir.

Q. Why did you keep the application a year and two days before doing anything about it?

Q. Well, so far as I was concerned, if they hadn't requested me to return it, it would still be there.

(Testimony of William C. Wurnsted.)

Q. Is that your usual practice, when you take an [211] application for a price?

A. Not necessarily.

Q. Not necessarily? A. No.

Q. But is it usual, I say? A. No.

Q. In fact, do you throw them in the waste basket or put them on file without answering them?

A. I did answer that. I called Mr. Wyman over and told him I was going out to the plant. As far as I was concerned, they had given us the original. That was only for a special permit for custom milling of lumber other than their own.

Q. If you were going out to the plant to find out what you would do with the application, you should at least notify them that you had been out and done something about it? A. I called them up.

Q. You mean you called them up when?

A. I called them up shortly after 539 went into effect.

Q. Do you remember doing that, or are you saying it?

A. No, I remember it distinctly, because——

Mr. Hitchcock: I object to that as repetition.

The Court: Sustained.

Q. (By Mr. Hughes): Didn't you tell Mr. Hitchcock you had forgotten all about this thing?

A. No, sir. [212]

Q. (By Mr. Hughes): Didn't Mr. Hitchcock tell you in his letter to tell Granite Falls Planing Mill——

(Testimony of William C. Wurnsted.)

Mr. Hitchcock: The letter that was referred to was from Mr. Foster, my investigator, and has so been testified to.

Mr. Hughes: If your Honor please, he said he wrote this letter because he was ordered to do it.

The Court: By Mr. Foster?

Mr. Hughes: Yes, by Mr. Foster.

Q. (By Mr. Hughes): Mr. Foster was under Mr. Hitchcock, wasn't he? A. I imagine so.

Q. (By Mr. Hughes): You say in your letter, there, that they didn't conform to the Regulation, is that right—your letter of May 5, 1945?

A. That is right.

Q. Why didn't you tell them at the time you received the application?

A. Well, if you want to know the truth, the application was so ridiculous because it didn't cover any of the requirements of SSR 27.

I thought that after I went out to see the plant I would go up and show them how to write this application. But frankly, I thought they forgot it—the letter was filed away; I never heard from them after I did make the second call.

Q. You say the letter was filed away. Do you mean you filed it away?

A. Their application apparently was filed away.

Q. And you lost track of it?

A. That is right. It is up to them to get the permission.

Q. Then your letter of May 5, 1945, just ex-

(Testimony of William C. Wurnsted.)

presses the view of Mr. Foster, is that correct; it didn't express your views, or did it?

A. I wrote this letter.

Q. Yes.

A. Apparently it expresses my views. [214]

Q. But you said you were ordered to do it.

A. I was ordered to return the application; that was all.

Q. You were ordered by Mr. Foster.

A. That is right. He says, "Why don't you return the application?"

Q. Did Mr. Foster have anything to do with you?

A. Well, at that time I was a little green pea down there and more or less if somebody barked hard enough maybe I did it.

Q. You mean in 1944 you were a green pea?

A. That is right; that is May 3, 1945.

Q. How long had you been a "green pea" with the O.P.A.?

A. Well, maybe I am still a "green pea."

Mr. Hitchcock: Just a moment.

Q. (By Mr. Hughes): How long have you been with the O.P.A.?

Mr. Hitchcock: Just a minute. I appreciate this is interesting but we are wandering afield, I think, in discussions of "green peas." If Mr. Hughes would qualify his questions.

Q. (By Mr. Hughes): When did you say you first went with the O.P.A.?

A. September, 1942.

(Testimony of William C. Wurnsted.)

Q. And in '45, you had been with them for three years? [215]

A. That is right. And if you remember right, I have always been extremely anxious to cooperate with the Enforcement Division. I thought if I could help them I would do it and that is why I did it.

Q. I see. Now you know that 165 provides an application for a price must be approved or disapproved within ten days, doesn't it—165?

A. I couldn't say.

Q. I will show it to you.

A. Even if you showed it to me, it is up to our attorney—the Price Attorney to ask a legal question. That is up to him on all regulations that are not regulations that my department works with.

Q. I see. Now, I am going to call your attention to MPR 165 which is in effect until May 3, 1944.

A. Wait a minute. I will look at this just the way I want to look at it.

Q. Yes; take your time.

A. This Regulation that you are showing me here has only got amendments 18 and that is up to December 31, 1942.

Q. Well, had there been any changes in this in '42?

A. Undoubtedly; but you said 1944. Then you show me a 165 of 1944.

Q. Well, have you one? [216]

A. I haven't got any.

(Testimony of William C. Wurnsted.)

Mr. Hitchcock: Mr. Wurnsted, have you SSR-27 which is the Regulation concerned?

The Witness: Yes, I have.

Mr. Hitchcock: Does that Regulation have any 10-day period?

The Witness: No, sir.

Q. (By Mr. Hughes): Does it fix any time?

A. It does.

Q. What time does it fix?

A. It fixes the time this way—the time is indefinite.

Q. (By Mr. Hughes): You have been familiar with most of the regulations concerning lumber, haven't you, and planing? A. Yes, sir.

Q. Are there any Regulations that you have read that give you more than thirty days to approve or to disapprove a Regulation—an application, rather, for price?

A. I don't remember any regulation in the lumber field where you find that clause. That clause may be in a few of the other Regulations—possibly to groceries, or applications for shoe repair or something like that; especially those in 165. But it isn't in the lumber Regulation and certainly it isn't in SS-165 or 29 or 36 or 40.

Q. You say it is not in 165.

A. I didn't say it wasn't in 165.

Q. You didn't say that?

A. No, sir. I told you that I wouldn't even attempt to answer 165.

(Testimony of William C. Wurnsted.)

Q. You know, as a matter of fact, that these regulations do provide a time within which an application must be [219] approved or disapproved, it shall be deemed to be approved?

A. That is just so much hogwash so far as the lumber regulations are concerned.

Q. It is. You feel then, that you had a right to keep this application for a year and do nothing with it at all?

A. That is right. If they were interested in getting this special permission, they were just as close to me as I was to them, and surely I was doing a heck of a lot more work than they were doing. I was even going out of my way to make the call to look at their plant.

Q. You knew on May 5, 1945, that this alleged violation had occurred some time prior to that date, didn't you?

A. I don't get the question at all.

Q. You knew when you wrote that letter on May 5, 1945——

A. I knew that the investigation was going on, yes; that Mr. Foster had a reason for it.

Q. That tells you, that you got from Mr. Foster, that the investigator intended to bring suit or words to that effect, didn't it? A. That is right.

Q. So you knew that suit was coming up? [220]

A. That is right.

Q. And you wanted to excuse your delay by sending it, even though you had held it?

A. No, I am not excusing myself for anything. It was up to them——

(Testimony of William C. Wurnsted.)

Mr. Hitchcock: I object, if the Court please, to the form of the last question and the several before that. I believe they are argumentative and in addition have been covered time and time again by other questions.

The Court: Sustained.

Q. (By Mr. Hughes): Mr. Wurnsted, I want to ask you: If you had been in the position of the Granite Falls Planing Mill, would you consider that you had received fair treatment if you had made an application, as they have made it, and received no reply until a year and two days later?

A. No, I would never have let myself get in that spot. If I was serious and if I had made an application, I certainly would have followed it up when all that was necessary was to come down from the tenth floor to the third. I made the offer to go out there.

Q. And they accepted it and tried to make a date for you to go out there? [221]

A. That is right. I couldn't go that time. Then I called back, as I said before, and he couldn't go—or something. He was sick or something; I don't know just what it was but I do know I made the call.

Q. But you didn't do anything about the application?

A. That is right; I don't deny that at all.

Q. You don't admit any laxity on your part at all? A. None whatsoever.

Q. You did promise and expect to visit the Granite Falls Planing Mill, didn't you?

(Testimony of William C. Wurnsted.)

A. That is right. I was doing that in an endeavor to help them. Don't forget the war was on.

Q. You said in your letter of May 5 that you never heard from the Granite Falls Planing Mill, is that correct? That is the letter returning the application.

A. Will you repeat your question, please?

Q. You say in your letter of May 5, that you never heard from the Granite Falls Planing Mill, is that a correct statement?

A. I don't see where I made it in the letter.

Mr. Hitchcock: I believe the letter is in evidence, and speaks for itself. If you desire some material from the letter, read it from the letter.

Q. (By Mr. Hughes): "Inasmuch as I never heard from you [222] regarding this matter?"

A. That is right.

Q. You did say that, didn't you?

A. That is right.

Q. (By Mr. Hughes): You also say in your letter that this 539 changes the requirements of Supplemental Service Regulation 27 to MPR 165?

A. Yes, sir.

Q. Is that a correct statement?

A. It changes it slightly.

Q. In what way?

A. In the first instance.

Q. Just point out the sections that are changed.

The Court: Mr. Hughes, I am sorry to interrupt you, but don't you think the Court can take that letter and take those Regulations and read it itself?

(Testimony of William C. Wurnsted.)

Mr. Hughes: I don't think your Honor could answer this question because he states in his letter as one of his excuses for doing anything that the qualifying requirements of 27 were changed by 539. I maintain there was absolutely no change in the qualifying requirements.

The Court: Don't you think that I am the judge of that and not the witness?

Mr. Hughes: I just want the witness to admit, himself, that that was a misstatement. I don't know how else I can do it.

Q. Do you know Charles H. Edwards?

A. Yes.

Q. He was a lumber investigator for the O.P.A. during 1944, wasn't he? [228] A. Yes.

Q. Did you discuss with him the application of the Granite Falls Planing Mill which is dated May 3, 1944, to operate under 539?

A. I don't think so, Mr. Hughes. I don't remember discussing the case with him at all.

Q. Specifically on or about October 26, 1944, didn't you tell him that this investigation of the Granite Falls Planing Mill should be dropped and you should forget about it—October 26, 1944?

A. I don't remember even discussing it with him.

Q. I though you said you did discuss it with him. A. I said I didn't discuss it with him.

Mr. Hitchcock: I would like to object to it. I believe the witness testified in his prior answer that he had not discussed it and therefore I object to this question.

(Testimony of William C. Wurnsted.)

Mr. Hughes: I am just trying to lay the proper foundation, your Honor, for impeachment of this witness.

Q. (By Mr. Hughes): Didn't you tell him substantially the same thing in November, 1944—that you should forget about it and this Granite Falls Planing Mill investigation should be dropped?

A. As I said before, I don't remember discussing it.

Mr. Hughes: If your Honor please, I wish to make an offer of proof, at this time. I understand your Honor sustained the objection to my question which I asked Mr. Wurnsted yesterday. So I will make the offer of proof now.

I offer to prove by this witness that if the Granite Falls Planing Mill had not planed this lumber, it would have cost each of the buyers mentioned in Plaintiff's Exhibit 2 more than it did. I understood your Honor to hold that that was not admissible and I would like to show that by this witness.

The Court: Is there any objection?

Mr. Hitchcock: Yes. I would object to that on the ground, first of all, that it would be based upon assumption and facts that are not within the province of this court. And has nothing to do with this case. It is based upon the assumption of what would have been the price had certain other facts, which were not true, been true. I believe it is pure supposition all the way through and is not a proper subject for examination at this time.

M. A. WYMAN

a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hitchcock:

Q. State your name, please?

A. M. A. Wyman.

Q. You are the M. A. Wyman who is a defendant in this suit? A. Yes, sir.

Q. How long have you been connected with the lumber industry, Mr. Wyman?

A. Since 1909.

Q. In various capacities? A. Yes, sir.

Q. Were you connected with the lumber industry during 1944, from July until December?

A. Continuously since 1909.

Q. What lumber companies did you hold an interest in between July and December, 1944?

A. M. A. Wyman Lumber Company, the M. A. Wyman Mill Company, the Granite Falls Planing Mill, the Kesterson Box Company. I believe that is all. [247]

Q. Where was your office at that time?

A. My present address, 743 Henry Building.

Q. Where was the Wyman Mill Company located?

A. Out of Granite Falls, about a mile and a half.

Q. When did you incorporate or cause to have incorporated the Granite Falls Planing Mill?

A. I believe it was testified here yesterday—I wouldn't know the exact date.

(Testimony of M. A. Wyman.)

Q. That testimony was correct?

A. I would think it was probably in January, '45.

Q. '45 or '44? A. '44; I am sorry.

Q. At that time you were president, were you not? A. I believe I was.

Q. What kind of an operation was the Granite Falls Planing Mill?

A. Well, it operated as a planing mill.

Q. A custom mill? A. Yes.

Q. Where was it located?

A. It was located on the sawmill property of the M. A. Wyman Mill Company.

Q. You heard the testimony of Mr. Doran, did you not, with reference to the fact that he was superintendent of both operations at that time; was that correct? [248] A. That is correct.

Q. Did he work under your supervision?

A. I had nothing to do with the Granite Falls Planing Mill. I ran the sawmill.

Q. You were president of it, were you not?

A. Of the Granite Falls Planing Mill?

Q. Yes. A. Yes.

Q. You had nothing else to do with it?

A. No.

Q. Other than being president? A. No.

Q. You have had occasion, Mr. Wyman, to follow rather closely the lumber Regulations?

A. I would say as closely as humanly possible while the things that came under my jurisdiction.

(Testimony of M. A. Wyman.)

Q. You were generally familiar with RMPR 26, were you not?

A. Yes, I am more familiar with that than anything else.

Q. You were familiar with SSR-27, were you not, under 165?

A. Well, in a more or less general way.

Q. Generally familiar? A. Yes, sir.

Q. You were generally familiar with that 539, were you [249] not?

A. Just about the same as 27 and 165.

Q. How long has the M. A. Wyman Lumber Company been in existence? A. Since 1922.

Q. You are still interested in that company, are you not? A. Yes; I am a partner.

Cross-Examination

By Mr. Hughes:

Q. Mr. Wyman, what kind of business did the Granite Falls Planing Mill do in 1944?

A. I have testified that I am not too familiar with their operations. I had nothing whatever to do with it. I had enough headaches without that one. My son looked after that. I think he could probably testify to that better than I could.

Q. Have you any knowledge of what kind of work it did?

A. Yes; servicing lumber and some resawing.

Q. Did they do any other work besides planing—servicing lumber?

A. They loaded cars; they trucked the lumber, and handled the lumber.

(Testimony of M. A. Wyman.)

Q. Were you personally or the M. A. Wyman Lumber Company, or the M. A. Wyman Mill Company engaged in milling or servicing or planing lumber at any time between July 11, 1944, and December 22, 1944?

A. Are you asking me about the M. A. Wyman Lumber Company?

Q. M. A. Wyman Lumber Company, M. A. Wyman Mill Company, or you personally; were you engaged in any of those things?

A. No. [252]

Q. Did you or the Wyman Lumber Company, or the Wyman Mill Company ever sell milling services to anyone between July 11th, and December 22, 1944?

A. No, sir; nor at any other time.

Q. Who looked after the compliance of the OPA milling service regulations during 1944 affecting the Granite Falls Planing Mill?

A. My son.

Q. Looking at Exhibit 1 for identification, what do these exhibits—sales of what kind of lumber does Exhibit 1 cover?

A. My answer would be the same as to Mr. Hitchcock. This first one would be for rough, green lumber. I rather imagine, since these are the documents which the OPA got from our office, that they probably are all one and the same thing; that is, they all cover the same general—

Q. Yes.

A. I might say that the OPA—

Mr. Hitchcock: Pardon me, sir.

(Testimony of M. A. Wyman.)

I would like to object unless the witness knows as to the facts he is testifying about. He testified he wouldn't know without going over it. He now testifies that he rather imagines certain things.

The Court: Well, you don't want to go over every one of those documents.

The Witness: You don't want me to do that?

The Court: No. Mr. Wyman, as shown by Exhibit Number 1 that you have there, is that planed lumber?

The Witness: No; that is rough lumber.

The Court: All right. Go ahead.

Q. (By Mr. Hughes): Did you sell any surfaced lumber to any of those people mentioned in Exhibit "A" to the Complaint—which I assume is the same as Exhibit 1—did you sell any surfaced lumber to any of those people?

A. I know what you mean.

Q. I mean, do those invoices——

A. These invoices—if I am correct in assuming that the OPA have picked out only invoices for rough green lumber that was manufactured by the M. A. Wyman Mill Company—if I am correct in assuming that, I can answer that question.

Q. Yes. It is stipulated, Mr. Wyman that these are sales of rough green lumber.

A. I understand that. But it doesn't say whether they came from the M. A. Wyman Mill Company or somebody else. It could be bought from Vancouver or California.

(Testimony of M. A. Wyman.)

May I ask Mr. Hitchcock a question? [254]

Mr. Hughes: Yes.

The Witness: Are these all invoices covering lumber that originated at the M. A. Wyman Mill Company?

Mr. Hitchcock: If the Court please, I believe the stipulation speaks for itself. That is stipulated to.

The Witness: Oh, I didn't understand.

The Court: All right. Go ahead, Mr. Hughes.

Q. (By Mr. Hughes): Did you ever have anything to do with fixing the prices to be charged for the servicing made by the Granite Falls Planing Mill? A. No, sir.

Q. Did the OPA investigate these same charges during the latter part of 1944 and the first part of 1945?

A. The OPA sent an investigator to our office, I believe it was in July.

Q. What year?

A. 1944. And he was there continuously—I say continuously—off and on, until I would say about the middle of December; something on the period of four months.

Q. Did you cooperate with him?

A. Yes, sir. We gave him a private office and a desk and a telephone and everything he asked for—whether they were invoices, correspondence, or what they [255] might be.

Q. Who was that? A. Mr. Edwards.

(Testimony of M. A. Wyman.)

Q. Did you ask him, when he finished, if he found anything? A. Yes, I did.

Mr. Hitchcock: If the Court please, I would like to object to this line of testimony. This present case is not based upon that investigation and that evidence was excluded as was reported yesterday. I therefore don't think that it is material now.

By Mr. Wyman's own testimony, the period of time covered—our suit was based upon violations from July 11, 1944, to and including December 22nd, 1944. The investigator went in there in July, and remained four months. He was there while this investigation was going on. This suit is not based upon that investigation, and this examination is not proper.

The Witness: He was the only investigator in our office.

Mr. Hughes: I have asked Mr. Hitchcock for a copy of his report. He says he is not going to have Mr. Edwards or Mr. Stockdale or any of those investigators here. I just want the Court to understand the result, if the Court will permit it, of Mr. Edwards' investigation after four months in the office of [256] Mr. Wyman, and Mr. Wyman says he finished in December, 1944.

The Court: Do you have Mr. Edwards subpoena?

Mr. Hughes: I have Mr. Edwards subpoenaed.

The Court: Will he appear?

Mr. Hughes: I hope to have him.

The Court: All right. I will sustain the objection, then.

(Testimony of M. A. Wyman.)

Q. (By Mr. Hughes): Do you know Mr. Wurnsted, Mr. Wyman?

A. I have met Mr. Wurnsted.

Q. Merchandise specialist for the OPA during 1944.

A. I have met him.

Q. Did you discuss this Granite Falls planing matter with him at any time during 1944 or 1945?

A. No, I didn't discuss it with him. I heard Mr. Wurnsted's testimony yesterday, which I think is substantially correct. This took place over two years ago, but as I recall an application was made by my son for the Granite Falls Planing Mill to operate under the so-called service charges. I would have said that probably the next day after that letter was written and mailed Mr. Wurnsted came in the office, and made himself known to me, and said—he had a letter in his hand; [257] I don't know whether it was that letter or a letter he received from Mr. Gervais which was produced yesterday. He said he would have to ask some questions about the Granite Falls Planing Mill. I told him I didn't handle that and took him in and introduced him to my son.

Q. Did you introduce him to your son at that time?

A. Yes.

Q. Did you call up Mr. Wurnstead shortly after May 3rd, 1944, and offer to take him to the Granite Falls Planing Mill?

A. I did.

Q. What did he say?

A. Well, he couldn't get away that day. As I recall, I called him up one morning and said, "I

(Testimony of M. A. Wyman.)

am leaving for Granite Falls about 10:00 o'clock"—or it might have been 11:00 or 1:00 or some other time. "I understand from my son you would like to go up and look over the layout and if you want to go with me today, O.K." He couldn't go with me at that particular time. I was of the impression, in thinking it back over, that I called him a second time, but I am not positive about that.

I do know that I told him either in that phone conversation—or if there was a second phone conversation— [258] it apparently was going to be difficult for him to get together with us and go when we went, so he could go any time he wanted to, just so he let me know or some of us know when he was going so we could be sure the superintendent was there. That was about the extent of my conversation with Mr. Wurnsted, and phone conversations to the best of my memory.

Q. Did he ever tell you verbally or in any other way—in writing or otherwise—that Granite Falls Planing Mill could not operate under 539?

A. Not me, no sir.

Q. Or its application could not be granted?

A. No, sir.

Q. Or anything to indicate such?

A. No, sir.

Mr. Hughes: That is all.

Redirect Examination

By Mr. Hitchcock:

Q. Just one question, Mr. Wyman. Pursuant to the stipulation that you have entered into through

(Testimony of M. A. Wyman.)

your counsel, you were president between July and December, 1944, of the Granite Falls, were you not? A. I think that is correct.

Mr. Hitchcock: That is all.

(Witness excused.) [259]

The Court: Call your next witness.

Mr. Hitchcock: The Plaintiff rests.

Mr. Hughes: If the Court please, at this time I move the Court, on behalf of M. A. Wyman, M. A. Wyman Mill Company, and M. A. Wyman Lumber Company, to dismiss this case on the following grounds: First, that the Second Amended Complaint states a new cause of action commenced after the expiration of the one-year Statute of Limitations, as provided by the Emergency Price Control Act.

Second, that the evidence introduced by Plaintiff at the trial shows a new cause of action and constitutes a variance with the allegation of the Second Amended Complaint.

Third, failure to prove any violation of revised maximum price regulations as alleged.

Fourth, failure to connect M. A. Wyman with any violation of Revised Maximum Price Regulation 26.

Fifth, estoppel by plaintiff to prove any violation of Maximum Price Regulation 539, and a failure to connect M. A. Wyman with any violation of Maximum Price Regulation 539.

I don't think the Court will probably want to hear an extended discussion of the ground that the

(Testimony of M. A. Wyman.)

Second Amended Complaint changes the cause of action [260] and was commenced after the expiration of the Statute of Limitations.

The Court: No; we have been over that before.

Mr. Hughes: I believe the evidence introduced at the trial of this case has failed to prove M. A. Wyman has violated any regulation. The witnesses are too; and Mr. Rothfield's testimony, the most favorable view I can take of it is that all he knows is what is shown by those invoices, and by what he read in the record. But from his personal investigation he knew and admitted he knew nothing. Those invoices, he says in effect, are crooked; that M. A. Wyman was the one who did the work. He states that to be a fact without any basis for it, he says, except the fact that the invoice shows that this lumber was sold as green lumber and shipped to the Granite Falls Planing Mill; the Granite Falls Planing Mill did the planing and, as in accordance with those invoices, M. A. Wyman was the shipper and sent it on to the consignee.

Now, that in itself I think shows that they were carrying out the instructions of the buyer—that the prices set forth in 539 were charged for the planing. But he says that the gist of the action is that the Granite Falls Planing Mill charged prices under 539 without getting permission to do so. They have put, I think, a little different construction on 539 from what I think the Court will put, and I think it is different from what the average person familiar with the lumber business would put.

(Testimony of M. A. Wyman.)

539 provides that a custom mill may charge the prices put in here if it is a custom mill—if it does custom milling services. But it says you can't be in common ownership with the ownership of a saw-mill. But it goes on to say if you do not qualify as a custom mill, under the paragraph (a) I have just referred to, you may under certain conditions get authority to operate under this regulation.

The rules covering this are as follows: an application must be filed with the OPA Regional Office nearest the operation; the application must show four things—three things, and it as a fourth—any other information applicable you may wish to show.

Now, the application that was filed substantially complied with this rule. And it goes on to say further, "Special authorization under this paragraph will be granted where the application enables the Regional Office to make findings—first, that will result in the greater production of surface boards of the dimension of kiln-dried lumber, green, partially dry, rough [262] or in thickness over two inches. Will provide necessary milling services which cannot reasonably be supplied by producing mill or by custom mills under paragraph "A." Will not result in unnecessarily increasing the cost of finished lumber to the ultimate consumer."

Now, we qualified under all four of those provisions. The testimony of Mr. Rothfield is that he didn't investigate to find out whether it could qualify under that provision; and the same with Mr. Wurnsted. He didn't investigate to find out

(Testimony of M. A. Wyman.)

whether or not it could qualify under those provisions. So the Regional Office could have made findings which would have justified the Granite Falls Planing Mill to charge the prices fixed in 539. And there is nothing here to show to the contrary. So, on the last provision—"will not unduly increase the cost to the consumer of the finished lumber."

Your Honor can see if the Granite Falls Planing Mill had not done this planing, it would have had to be shipped to another mill in Everett, a distance of some fifteen miles, who could charge under 539 without getting permission, the full price here, and the buyer would have had to pay an additional charge of hauling; so the net result is that the buyer got this [263] lumber cheaper than it would have gotten it had the Granite Falls Planing Mill refused to plane the lumber.

But even assuming—if the Court can find even that the Granite Falls Planing Mill has done something it shouldn't have done—that is a violation of 539 and a violation of 26, which is what is charged. There certainly has been no attempt here to connect M. A. Wyman with the Granite Falls Planing Mill.

Now, they admit that Exhibit 1—the charges for the rough green lumber are correct. So that the only thing for this court to determine, it seems to me, is first whether the government is estopped after having had this application, which I maintain substantially complies with the rule—after having held this application for a year and two days, they then decide that they are not going to approve it; that is, in the meantime they claim that the Wyman

(Testimony of M. A. Wyman.)

Lumber Company, or the Granite Falls Planing Mill has violated a regulation which they could have told them right then, and even throughout the year of 1944—during this investigation they at no time told them anything about it. So I think, your Honor, the government is, the OPA is estopped from claiming any violation under the admitted facts under this case. But I don't believe in any event can the court find against M. A. Wyman merely because [264] he happened to be president of the company, especially when the evidence clearly shows that he had absolutely nothing to do with the fixing of the prices.

I have a brief in this case which I know—I believe, at least, is the law on trying to hold an officer of a corporation liable for the corporate acts. The general proposition is that an officer is not liable unless you can show that he had some active part in directing this work; and the fact that he was president of the company, the fact that he held any office in the company, as the courts have held, is not enough; you must go further and show that he had something to do with the operation of this company. I submit, your Honor, that there has been a complete failure of proof to connect M. A. Wyman, and he is the only defendant in this case.

The Court: Motion denied. Call your first witness.

Mr. Hughes: Mr. Wyman.

Testimony on Behalf of Defendants

M. A. WYMAN

a witness called on behalf of defendants, having been [265] previously duly sworn, testified as follows:

Direct Examination

By Mr. Hughes:

Q. Will you tell the Court briefly the set-up of the Granite Falls Planing Mill and what kind of work they did; tell the Court how it first originated and something about it.

A. There is always a reason for all of these things. I would like to explain to the court—this little sawmill was started in 1942, as a sort of a wood lot mill. By that I mean we operated in a logged-over territory on low-grade logs, which under OPA ceiling prices could not be brought into market on account of the low price and the high cost of logging and trucking—transportation. We started this mill——

Q. Are you speaking of the sawmill?

A. We started the sawmill in about September or October, 1942. It ran three or four months that year. We lost about eight thousand dollars. We tried to figure [267] out why and where we lost the money and we concluded—the only conclusion we could arrive at at that time was that we had a scaler—a grader and scaler who was not competent and who was giving the people from whom we

(Testimony of M. A. Wyman.)

bought the logs a little the best of it. So we corrected that situation and started out in '43 and ran the entire year of '43 before taking a—stopping and taking an inventory and a check to see how we were getting along, as we rather thought we were getting along fairly good.

December 1, '43, when we *been* an association scaler on the lake and scaled the logs in the pond, and closed our books, we found we had lost \$24,000 in 1943. We called in Mr. Doran, who was on the stand yesterday. We all got around the table and tried to figure out where we had lost the money. We discovered that it was costing us altogether too much money to plane the lumber. I think it was taking eight or nine men. So at that time the lumber market was very active. We could then sell all the lumber we could make rough just as easy as we could make surfaced and a great deal more than we could possibly make and ship rough. So I said, "Well, the answer is very simple as far as I am concerned. We shut the planing mill down and operate as a rough mill." And [268] that is what we did. From there on the M. A. Wyman Lumber Company operated as a rough mill. I would say a week or two after we had arrived at that decision and were taking orders—proceeded to take orders for rough lumber, my son called me one Sunday afternoon and he said—

Q. That is M. H.?

A. My son, "M. H." He said, "As you

(Testimony of M. A. Wyman.)

know, there is a new OPA Regulation out which permits charging for surfacing lumber." He says, "Now, it seems to me as though it is a shame for us to require our customers to take this rough lumber, and take it to Everett or Tacoma and have the lumber surfaced. It would cost them transportation costs"—I might explain that we are not located on a railroad either. We are between seven and eight miles from a railroad and we are about twenty miles from Everett. It has been testified here several times as to the distances, but it is about twenty miles—I think about twenty-two miles.

He says, "We do this: We make application under this OPA service charge, and we could perform this service for our customers cheaper than they could have it done elsewhere." I said to him, "Well, Sonny, I am just perfectly happy the way I am running this mill as a rough mill. As far as I am concerned, that [269] is the way I want to run it. If this can be done and it will be of advantage to our customers and not cost them any more and possibly save them some money, it is perfectly all right with me, but I just don't want to have anything to do with it, because I have enough things to do as it is, and I just don't want any more."

Now, that is the background.

(Testimony of M. A. Wyman.)

Cross-Examination

By Mr. Hitchcock:

Q. And you obeyed all regulations at that time, did you not?

A. The OPA had been through us with a fine-toothed comb. They didn't find anything wrong.

Q. So you did charge your customers for surfaced lumber in 1943, did you not?

A. That is correct. We shut the planer down in 1944, and never planed the lumber thereafter.

Q. With reference to the year 1943, I believe you stated that your operation at that time showed a loss? [271]

A. About \$24,000.00.

Q. When did you ascertain that loss?

A. At the close of the year.

Q. When did you have this meeting that you speak of?

A. The early part of January; as soon as we got our figures in.

Q. You decided at that time, I believe, that you would operate better as a rough mill, is that right?

A. That is correct. We just couldn't afford to surface the lumber. We were losing too much money. That is where the money was being lost.

Q. How did you expect to correct that situation?

A. Shut the planer down, and operate as a rough mill, which is what we did.

Q. When did you arrive at that decision?

A. The early part of January; just as soon as we got our figures in and found out what had happened.

(Testimony of M. A. Wyman.)

Q. (By M. Hitchcock): Immediately after the formation of the corporation, that is the Granite Falls Planing Mill, you started charging increased rates for surfacing, is that correct?

A. No, sir; that is not correct. As far as M. A. Wyman and the M. A. Wyman Lumber Company are concerned, I understand we are the only defendants in this case. They have sold nothing that originated at that mill except rough lumber.

Q. That rough lumber was surfaced then in the Granite [273] Falls Planing Mill, wasn't it?

A. I wouldn't say it all was. I think our customers had the choice of having that surfaced wherever they pleased. They could take it to any milling plant they wanted to and I believe some of it was done elsewhere. I am not just sure about that.

Q. With reference to the transactions in this suit between July and December, 1944, wasn't all of that lumber surfaced in the Granite Falls—none of that was taken to other customers?

A. Do you mean all of the lumber that was produced in that mill?

Q. All of the lumber as shown by these transactions in our exhibits; all of that was surfaced by the Granite Falls, was it not?

A. I wouldn't say so, no.

Mr. Hughes: Which exhibit is that?

Mr. Hitchcock: Exhibit 1.

A. (Continuing): I would say for your information and the information of the Court that dur-

(Testimony of M. A. Wyman.)

ing that period we did ship some rough lumber. There were cars that went out of there rough that were never surfaced. I haven't gone over the papers there but we were shipping rough timbers there all of the time, off and on. [274]

Q. (By Mr. Hitchcock): With reference to the customers who desired surfaced lumber, that was surfaced in the Granite Falls, wasn't it?

A. I wouldn't say that. They weren't compelled to have it surfaced in the Granite Falls Planing Mill. They could have it surfaced any place they wanted it done. Many of them were located at a distance. I know some of them we sent to planing mills and they would resaw the boards and surface them.

M. H. WYMAN

a witness called on behalf of defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hughes:

Q. You are M. H. Wyman?

A. That is right.

Q. And you are the son of M. A. Wyman?

A. That is right.

Q. Who looked after the business of the Granite Falls Planing Mill during 1944, Mr. Wyman?

A. I did.

Q. And your father was president during that time?

A. That is right.

(Testimony of M. H. Wyman.)

Q. Was he president at any time during the year 1945?

A. No. The officers were changed as of the first of January, '45.

Q. Did your father have any interest in the Granite Falls Planing Mill after that?

A. No, sir.

Q. You held an office in the Granite Falls Planing Mill, did you not?

A. Yes; I held the office of Secretary-Treasurer.

Q. You were served with a summons and complaint in this case when—do you remember the date?

A. No, I don't.

Q. December 3, I think the record shows. Was that the first time you were served in this case?

A. Yes.

Q. What kind of business did the Granite Falls Planing Mill do in July, 1944?

A. It received lumber, surfaced lumber, broke down lumber.

Q. That is all planing lumber, is that right?

A. That is right.

Q. Did it do anything else besides planing lumber? [277]

A. Yes. It hauled the lumber some seven miles to the railroad where it had facilities to load.

Q. Did Granite Falls Planing Mill sell any lumber during 1944?

A. Granite Falls Planing Mill never owned any lumber.

Q. They never sold it? A. No.

(Testimony of M. H. Wyman.)

Q. They just sold planing services, is that true?

A. That is true.

Q. And that is located at Granite Falls, Washington?

A. That is right.

Q. Were you or your father, the Wyman Lumber Company, or Wyman Mill Company, ever engaged in milling lumber or planing lumber at any time from July 11, 1944, to December 22, 1944?

A. I didn't understand.

Q. I say: Were you or your father or the M. A. Wyman Lumber Company or the Wyman Mill Company engaged in planing any lumber and milling lumber at any time from July 11, 1944, to December 22, 1944?

A. Not as individuals, no—no.

Q. Not as individuals; not under the names that I have just specified?

A. No.

Q. Did you or your father, M. A. Wyman, or the Wyman Lumber [278] Company, or the Wyman Mill Company, ever sell milling services to anyone during that period?

A. No.

Q. Who looked after the O.P.A. milling services—the service regulations during 1944 affecting the Granite Falls Planing Mill?

A. I did.

Q. Who fixed the charges for the service under 539?

A. I did.

Q. Did you study these regulations as they came out, Mr. Wyman?

A. Yes, I did.

Q. What effort did you make, will you tell the Court, to comply with these regulations as they came out from time to time affecting the planer?

(Testimony of M. H. Wyman.)

A. The regulations were changed several times during the period that the Granite Falls Planing Mill operated. When the corporation was originally set up, the Regulation MPR 165 was in effect.

Q. MPR 165 was in effect at the time you organized the corporation in 1944?

A. That is right. The corporation was organized in the latter part of January, 1944.

Q. What regulation was in effect at that time?

A. I believe MPR 165. [279]

Q. Did Granite Falls Planing Mill comply at all times with that Regulation, as far as you know?

A. Yes, they did.

Q. When did the first change in that Regulation come out? A. In——

Q. Pardon me? A. Yes.

Q. 165 fixed the price for planing lumber, did it?

A. No, it didn't; not in a dollars-and-cents figure. The Regulation at that time said that if the operation was not in business in March of '42, they would charge the price of their nearest competitor.

Q. That is right. Who was your nearest competitor?

A. I believe Walton Lumber Company in Everett was our nearest competitor at that time.

Q. How far is that from the Granite Falls Planing Mill? A. About 20 miles.

Q. Did you use the price of the Walton Lumber Company at the planing mill?

A. Theirs or a little less.

(Testimony of M. H. Wyman.)

Q. Theirs or a little less?

A. Ours was possibly a little less.

Q. These charges in this Complaint that you have read, were they investigated by the OPA during 1944?

A. Yes, they were. [280]

Q. By whom?

A. By Mr. Edwards.

Q. How long was he there?

A. He was in the office in Seattle, oh, off and on from four or five months.

Q. In the office there, of the M. A. Wyman Lumber Company?

A. That is correct.

Q. Where did you attend to the business of the Granite Falls Planing Mill?

A. I had my office in Seattle. The planing mill's address was Granite Falls where they kept their bank account and all payments came to Granite Falls.

Q. The Mr. Edwards you speak of was an OPA investigator at that time?

A. That is right.

Q. Did you cooperate with him?

A. Yes, we did. We gave him all of the information he asked for.

Q. And he finished his investigation when?

A. I am not sure of the date; it was the latter part of '45.

Q. '45?

A. '44; pardon me.

Q. (By Mr. Hughes): Who else investigated the Granite Falls Planing Mill during 1944—'45?

A. There was nobody else in our office at that time except for Mr. Stockdale who followed Mr. Edwards and came up and asked for certain infor-

(Testimony of M. H. Wyman.)

mation to take out of the office with him. He never spent—I don't believe he spent any time in our office.

Q. Did you give him the information?

A. We did, yes.

Q. Who succeeded him as investigator?

A. Well, there was a Mr. Foster in our office once or twice.

Q. Did you furnish him with all of these invoices? A. I did.

Q. And of which photostatic copies have been made; you furnished them?

A. That is right. [282]

Q. That was both of the business of the M. A. Wyman Lumber Company, and the Granite Falls Planing Mill? A. That is right.

Q. Did the Granite Falls Planing Mill make an application to the Regional Office of the OPA to operate under 539? A. No, they did not.

Q. Did it make an application on May 3rd to operate under supplementary Order 27 to 165?

A. Yes.

Q. And that was effective?

A. I believe it was effective on May 3rd, '44.

Q. Prior to that, it was under 165?

A. Prior to that there was no Regulation requiring an application to be made.

Q. What did you do with this application?

A. The application was made to the Regional Office of the OPA and addressed to the White-Henry-Stuart Building, here at Seattle.

(Testimony of M. H. Wyman.)

Q. Handing you Defendants' Exhibit A-2 for identification, I will ask you if that is the application which you mailed?

A. Yes; I signed that.

Q. What became of that; what did you hear from that application? [283]

A. We heard nothing from it—in regard to this application, we heard nothing from the OPA.

Q. Did you talk to someone?

A. I did talk to Mr. Wurnsted and discussed going up to the physical properties.

Q. What was said at that time?

A. As I remember it, my father brought Mr. Wurnsted in and asked me to give him what information he wanted. I knew more about the planing mill, to tell him what he wanted to know. We sat down. The essence of the discussion was making an arrangement to go up together and for him to view the properties of the planing mill at Granite Falls.

Q. What did you understand the purpose of viewing the property was?

A. Of course, my impression was whether he was going to act on the application we had made.

Q. Did he give you an impression of whether he would or not?

A. No. He gave no indication at that time.

Q. What did he say he wanted to see the mill for?

A. Merely to look over the physical setup of the property.

(Testimony of M. H. Wyman.)

Q. Did he indicate the purpose was to let you know whether or not your application would be approved?

A. That was the understanding I gathered for the reason [284] for going up to the property.

Q. Did you talk to him again about going up?

A. Yes. I called him once or twice and told him when I was going and asked him if he would care to go up with me.

Q. What did he say?

A. We didn't get together; rather, he had something else to do or when he called me I believe once I had something else to do.

Q. Did he say he would call you when he was ready; did he indicate that he would go any further?

A. I presumed that the reason he was going up was to act on our application. I figured he would find a way of getting up there.

Q. Did you hear anything from him after—that was in May, did you say, 1944?

A. I think that is right.

Q. Did you hear anything from him later on?

A. We heard nothing—after these phone conversations, we heard nothing more about the application.

Q. I will ask you if that application was made under the provisions of Supplementary Order 27 to 165.

A. That is right.

Q. Did it comply substantially with the requirements of an application? [295]

(Testimony of M. H. Wyman.)

A. That is why I wrote—endeavoring to cover the points that were brought out in the——

Q. Did Mr. Wurnsted tell you at any time it did not comply before sending you this letter?

A. No, he did not.

Q. Handing you Exhibit 3, did you receive a letter from Mr. Wurnsted on or about May 5, 1945?

A. I did.

Q. Was that the first time you heard from him after you talked to him? A. That is right.

Q. In the meantime, you were operating under 539? A. That is right.

Q. 539 superseded 27 on June 5, 1944?

A. That is right.

Q. That Regulation 539 was issued on June 5, and was effective the same day, is that right?

A. Yes.

Q. Mr. Wyman, why did you operate under 539 from July 11th to December 22nd?

A. The application I had made under MPR 165, Supplemental Servicing Regulation 27, the information required in the application was identical to the information required in the application to be made under 539. I had made my application under 165, and had had no [286] answer from it.

Q. And so what?

A. So I could see no point in copying the same letter and putting 539 at the top of it instead of 165.

Q. In that letter you got from Mr. Wurnsted, he says—speaking of 539—“This new regulation on

(Testimony of M. H. Wyman.)

custom milling changed the qualifying requirements of Supplementary Order 27." Did it change its qualifying requirements? A. No, it did not.

Q. Have you examined the two regulations?

A. Yes, I have.

Q. Are they the same?

A. So far as I can tell, they are identical in wording.

Q. Did Mr. Wurnsted tell you why he wanted to see the planing mill—why he wanted to see the setup personally?

A. I don't know whether that was brought out or not. I presumed all of the time that it was in regard to our application which had been made.

Q. Does 539 contain any provision that no sale under the Regulation may be made until permission received from the OPA?

A. No, it doesn't.

Q. Do you know whether MPR 165 fixed the time in which [287] an application for a change of price must be accepted or rejected?

A. I believe it is ten days.

Q. Ten days? A. The application.

Mr. Hitchcock: I object to that question and answer as calling for a conclusion. The Regulation referred to is MPR 165. The Regulation involved, if the Court please, is SSR-27, under 165, which is different. That was brought out, I believe, in Mr. Wurnsted's examination.

The Court: The Court will read those. Go ahead.

(Testimony of M. H. Wyman.)

Q. (By Mr. Hughes): Supplementary Order 27 to 165, I believe, provides in substance that if a planing mill is owned or controlled by a sawmill, that the same operation is made—where the same operation of selling lumber and planing lumber is made—that even though that is present, that you can still get permission from the OPA to operate under 539?

A. An application may be made.

Mr. Hitchcock: I object to the question as leading, if the Court please.

The Court: It is leading but he may answer.

Mr. Hughes: I have been trying to save time.

The Witness: The way I understand the Regulation, supplementary 27 to 165 says that a custom mill, if there is an interlocking ownership or financial interest, then under those conditions must make application; if there is not, then they automatically have a license to operate.

Q. (By Mr. Hughes): It goes further than that, doesn't it, and says that if the OPA can find certain things true, why, permission will be granted.

A. That is true.

Q. Were those things true or not true with the Granite Falls Planing Mill?

Mr. Hitchcock: I object to that, if the Court please, as being a conclusion.

Mr. Hughes: I want to show, if the Court please, that the application would have been granted if Mr. Wurnsted had taken it up and done as he should have done, because we qualified in every

(Testimony of M. H. Wyman.)

particular as set out in 539; and the OPA would find that we came under the provisions provided by 27 of 539.

I think, your Honor, it is material——

Mr. Hitchcock: It is based upon supposition, if the Court please.

Mr. Hughes: ——to show at least good faith.

The Court: Overruled. Go ahead.

A. I believe that is brought out in my letter of application to the Regional Office where I bring out the fact that there are many rough mills. There are thirty or forty rough mills within a 20-mile area up there, or more—small mills whose—well, they are making ties for the railroads say, and they have lots of pieces that can be worked up—if they had the facilities—to go into the lumber market and lumber channels which in most cases are waste unless they are salvaged and put into a plant that has facilities to work them up. I bring that out in my letter of application.

Q. (By Mr. Hughes): In other words, as I understand it, the OPA, if they had followed this up, would necessarily have found that you could qualify under this Regulation 539?

A. If I hadn't thought so, I would have continued to operate the planing mill.

Q. Did the Granite Falls Planing Mill confine its planing to lumber from the Wyman Lumber Company?

A. No; no, they did not. There was considerable

(Testimony of M. H. Wyman.)

lumber that was bought and brought in from these small mills that went through the Granite Falls Planing Mill.

Mr. Hughes: I will ask this question and [290] then I will be through with the witness.

Q. (By Mr. Hughes): If this planing had been done by the Walton Lumber Company, which is your nearest competitor, would it have cost the buyer more or less?

Mr. Hitchcock: I will object to that.

The Court: The Court has excluded that heretofore, but seeing now that it—as the defendants contend—has become material, the objection is overruled. You may answer. This is in support of those requirements in the Regulation?

Mr. Hughes: Yes.

The Court: You may answer.

A. If the lumber had been sold rough—any lumber from any mill—it has to go to a custom mill to be surfaced for several reasons. If the customer is in Iowa or Chicago or some place else, unless he has it done on the West Coast, he has got to pay freight on the rough lumber which is considerably more than it would be on surfaced lumber, so it has to be done some place on the west coast. There are numerous custom mills in Western Washington and Oregon. Some customers do business with one and some customers do business with others. It would have to go to one of them to be custom milled, and it would either have to be [291] trucked

(Testimony of M. H. Wyman.)

or shipped by rail at a considerable freight charge.

Q. (By Mr. Hughes): Would it have cost them more?

A. Yes; by the amount of freight it would go into and, as I said, in most cases we charged less than the MPR 539 maximum prices. It would have cost them full MPR 539 plus the freight into their custom milling plant.

Mr. Hughes: I think that is all.

Cross-Examination

By Mr. Hitchcock:

Q. Mr. Wyman, at the time that you were connected with Granite Falls, you were thoroughly familiar with Supplementary Service Regulation 27? A. I read it a good many times.

Q. You read it especially with a view to the application that you filed, did you not?

A. That is right.

Q. Let me understand the situation with respect to that application; is it your understanding at that time that in the event that a planing mill and an ordinary sawmill or any other lumber operation, under joint ownership or control, that it was necessary, before [292] the planing mill could plane or surface lumber, to secure an authorization from the OPA?

A. I don't believe it states that. I believe it says where there is an interesting ownership or joint control, an application may be made.

Q. Doesn't it say, as a matter of fact, in para-

(Testimony of M. H. Wyman.)

graph 3, Section 2, that it “does not own or control and is not owned or controlled by and is not under common control of the mill producing specie 26—and so on?

A. That is the definition of a custom mill.

Q. Then it goes on and states, “If you do not qualify as a cusotrm mill under paragraph “A”—which is the one that states that a custom mill is the one that performs custom services—“under certain conditions you may get authority to operate,” isn’t that right? A. That is right.

Q. And you, of course, filed under these special conditions because of the fact that your father was president and also in the Wyman Mill Company, is that correct? A. That is correct.

Q. You are thoroughly familiar, I presume, and went over the application carefully as to what that application should contain? A. I did.

Q. What should it contain?

A. It should show how granting the license would gather up more lumber for the war effort—

Mr. Hughes: Well, here it is in the Regulation. I wouldn’t think that the witness would be required to memorize what is covered by the Regulation.

The Court: Make your objection and the Court will rule.

Mr. Hughes: He has asked that the witness what are the qualifications. There are quite a number in the Regulation and I don’t think that the witness should be bound to know each one of those four different requirements because they are

(Testimony of M. H. Wyman.)

in fine print and I think, if he had the Regulation before, he could——

The Court: Can you answer the question without the Regulation before you?

The Witness: I think I can answer most of the Regulations.

The Court: If you can't take the Regulation.

A. (Continuing): The application must show the location of the plant; it must show the equipment—what it can do and how much equipment it has—how much capacity it has; it must show it is going to help to get more lumber; what the granting of the application is going to accomplish for the war effort. [294]

Q. (By Mr. Hitchcock): Were there any other requirements about cost?

A. I don't remember.

Mr. Hughes: Costs to the buyer?

The Witness: I don't remember.

Q. (By Mr. Hitchcock): As a matter of fact, to refresh your recollection, Mr. Wyman, I presume you read these carefully before you filed the application?

A. That is true. That was two years ago.

Q. As a matter of fact, doesn't paragraph 2 state that the extent of ownership or control of or by any other operations relating to forest products or common ownership or control, giving name, location, and the nature of the other operation, is one of those qualifications? A. I believe it is.

Q. That is necessary, isn't it?

A. That is right.

(Testimony of M. H. Wyman.)

Q. I will ask you to refresh your recollection from Defendants' Exhibit A-2, and tell the Court if that states anything in there with reference to ownership at all.

A. No, it does not. I neglected to put that in.

Q. You neglected to put that in, but you knew it should [295] be in at the time you made that out, is that correct?

A. I was working under a deadline then. When that letter was written, it was the date the Regulation became effective and I had to get it in the mail that day and I wrote it out very hurriedly.

Q. I thought you testified you went over the Regulation thoroughly.

A. I did read the Regulation. I had to, to make the application.

Mr. Hitchcock: That is all.

Redirect Examination

By Mr. Hughes:

Q. Did Mr. Wurnsted tell you that your application was faulty; at any time did you hear from him?

A. No, I did not.

Mr. Hughes: Mr. Edwards.

Mr. Hitchcock: Before this witness takes the stand, I should like to object in toto to any evidence he might give in this base based upon the fact that none of our present case is based upon any investigation by Mr. Edwards. However, in the event the [296] Court desires to hear the testimony of Mr. Edwards, relative to the investigation

(Testimony of M. H. Wyman.)

he did make, we are willing on behalf of the agency to have that testimony taken with the understanding that we may be permitted to go into other phases of the transactions that were examined; in other words, to show what facts, if any, were brought out by his investigation as to other matters that he was on at that time.

The Court: I don't know why he is called. Go ahead and proceed.

CHARLES H. EDWARDS

a witness called on behalf of Defendants, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Hughes:

Q. Are you Mr. Charles H. Edwards?

A. I am.

Q. Mr. Edwards, were you employed by the OPA as an investigator during 1944?

A. I was.

Q. A lumber investigator, were you?

A. Yes.

Q. Were you ever in the lumber business?

A. Before that?

Q. Yes? A. Yes.

Q. For how long?

A. Well, for practically forty years.

Q. Forty years? A. Give or take.

(Testimony of Charles H. Edwards.)

Q. When did you first begin to work with the OPA here in Seattle?

A. It was approximately—I think it was the 10th of January, 1943.

Q. Did you investigate M. A. Wyman or the Granite Falls Planing Mill during 1944?

A. I did.

Q. Was that investigation for a violation of 539?

A. Yes.

Q. Do you remember?

A. Yes.

Q. Did you, in the course of that investigation, talk to Mr. Wurnsted during the year 1944, concerning 539 and the Granite Falls Planing Mill?

A. Yes; I talked to him possibly you might say, more on the matter of 165 and SS-27, which was superseded by 539.

Q. Did you discuss the application made by the Granite [298] Falls Planing Mill to the OPA, dated May 3, 1944?

A. I did.

Q. What was said by Mr. Wurnsted at that time concerning that investigation?

A. When I was checking these files, and I was formed that they had made an application, I went in to Mr. Wurnsted's office to investigate and locate this application. I found the application was there; and it had been there for a considerable period of time—several months probably. It would be longer than several months. As I remember, it was made about in May, and I think I went in about the 26th of October.

(Testimony of Charles H. Edwards.)

Q. The 26th of October?

A. Of 1944. And the application, to my best recollection, was still in his office.

Q. In whose office?

A. Mr. Wurnsted's office.

Q. What was said; have you got any notes as to what was said by Mr. Wurnsted; did you keep a diary?

A. Yes, I kept a diary.

Q. You kept a diary of some of the more important events, you thought, at that time?

A. Yes.

Q. Have you any record of any conversation with Mr. Wurnsted concerning this application?

Mr. Hitchcock: I object, if the Court please, to this line of questioning. I don't think it is material to this case.

Mr. Hughes: I think, your Honor, Mr. Wurnsted's statement here would give the Court the impression that he was against the operation of the Granite Falls Planing Mill as it operated. But his statement to Mr. Edwards shows entirely different. I just want to show by this witness that Mr. Wurnsted told Mr. Edwards on October 26, 1944, and also in November, 1944, that this investigation should be dropped and he should forget about it, or words to that effect. He said that he had had this application for several months, and nothing had been done with it.

Now, I asked him the question pointblank if he had made such a statement, and he said no. He said he didn't remember. He said he didn't remember

(Testimony of Charles H. Edwards.)

making it,—he didn't say no. I called this witness to show that he did make those statements.

The Court: Well, I don't see that it makes any difference whether he did or did not. But I remember you did ask him that question and I think it was without objection and he answered. So you may answer the question.

The Witness: May I read from my notes, Mr. [300] Hughes?

Mr. Hughes: Yes.

Q. (By Mr. Hughes): What do your notes show? A. On the 26th of October——

Q. What year?

A. 1944, "Wyman case continued. I checked with Wurnsted on number 165 application and found it still on his desk waiting for a visit to the Granite Falls Planing Mill. Mr. Wurnsted suggested we drop previous violations on non-compliance and start over from scratch." My record shows "I doubt is J. S. B."—who was Jerome S. Bishop—"will O. K. this."

Q. Who was Jerome S. Bishop?

A. At that time he was the chief of the lumber investigating headquarters at Portland.

Q. You mentioned 165; did that refer to Regulation 165?

A. That is Regulation 165 and SS-27.

Q. Did you have any other talk with Mr. Wurnsted about this application?

A. Well, yes. I talked to him at various times over a number of matters. I have a record here going into——

(Testimony of Charles H. Edwards.)

Mr. Hitchcock: I will object to those questions and answers.

The Court: Wait just a minute. [301]

A record going into what?

The Witness: A conversation with Mr. Wurnsted regarding this same case.

The Court: You asked Mr. Wurnsted about one case.

Mr. Hughes: I asked him, also, if he made a similar statement in November, 1944. He said he didn't recollect.

The Court: I don't see what difference it makes about what conversations the two men may have had in the office.

Mr. Hughes: I did it for the purpose of showing the good faith of Mr. Wurnsted, your Honor. He has made some statements here that would indicate to the Court——

The Court: You may go ahead. Objection overruled.

A. (Continuing): "On November 18, 1944, the Wyman case, Mr. Wurnsted said to me that he felt all firms prior to '43 are in violation of MPR 165 because there was no permission prior to that date to operate."

Q. (By Mr. Hughes): Did he indicate whether he was doing anything with those?

A. No. [302]

Redirect Examination

By Mr. Hughes:

Q. Did Mr. Wyman give you cooperation in your investigation? A. Thoroughly.

(Testimony of Charles H. Edwards.)

Q. And you were there for some time, you say?

A. I was there for a considerable period of time and I was treated very nicely by everybody in the office.

Q. And you had access to all of the records?

A. All of the records.

Q. You had an office and a telephone?

A. I did. I was offered a private office with a telephone and I had access to all of the records and any stenographic service I might require. [305]

The Court: Is that all of the evidence?

Mr. Hughes: That is all.

Mr. Hitchcock: That is all. [308]

The Court: The record may show that the case is submitted. The Court will take it under advisement and will rule upon it Monday at 10:00 o'clock.

Mr. Hughes: Your Honor doesn't wish any argument?

The Court: No. [309]

The Court: In the case of Paul A. Porter vs. M. A. Wyman, take an order for a judgment in favor of the Plaintiff and against the defendants for single damages in the sum of \$19,130.67. That is the amount as shown by your exhibit "A." Is that the proper amount of single damages?

Mr. Hitchcock: That is the proper amount, sir.

The Court: Very well; single damages, only. I will say, Mr. Hughes, that if the Court could, it would render a judgment for a less amount of damages.

Mr. Hughes: May I ask your Honor what disposition was made of Count 1, the Injunction Count?

The Court: That mill has been sold and disposed of. Do you insist on an injunction?

Mr. Hitchcock: I will leave that matter entirely up to the Court. The facts are true,—the mill has been sold and disposed of. However, M. A. Wyman is still in the lumber business, the defendant, but I will leave that entirely up to the Court. [311]

Mr. Hughes: There is nothing in the Complaint—there is no attempt to prove that they have ever tried to violate since December 20th. There is no showing that they have ever threatened to violate and, as I understand the purpose of an injunction, it is to restrain and not to punish.

The Court: I doubt if it makes any difference to the Government whether there is any relief granted in that matter. That is Count 1, isn't it?

Mr. Hughes: That is correct.

The Court: Well, that relief is denied. Just enter a judgment in the amount that I mentioned.

Mr. Hughes: I would like to ask the Court to fix the amount of the supersedeas in the case of appeal; I would appreciate it. Your Honor will be away. I would like also to have permission to present to Judge Bowen or Judge Black the approval of the supersedeas bond so it won't be necessary.

The Court: That will be all right. What is the Statute,—in equal amount?

Mr. Hughes: I will say that heretofore the Court

has been putting it at just about the same amount. Of course, an appeal bond has to be in the sum of \$250.00 to cover the costs. So I would say the amount of the judgment,—and of course, we have to [312] have a cost bond, too.

Mr. Hitchcock: Cost, that is correct.

Mr. Hughes: So that would be \$250.00 more.

Mr. Hitchcock: That is entirely satisfactory, your Honor.

The Court: All right. Set the supersedeas bond in the sum of \$20,000.00. That will avoid the odd figures.

Cost bond in the sum of \$250.00.

Mr. Hughes: Your Honor, may the record show that Judge Bowen may approve the bond and sign such Orders as are necessary to carry out the Appeal?

The Court: The record may show that any Judge of the Western District of the State of Washington may approve the Supersedeas, the Appeal Bond, and to sign any other Orders necessary in the perfecting of the appeal.

Mr. Ogden: If your Honor please, there is just one other thing and that is how this judgment should run, insofar as the Defendant Edward Doran is concerned. He has been dismissed, as an individual. But does the judgment run against the individual? That is the same problem we have had from the beginning.

The Court: Judge Bowen made a very clear order dismissing these defendants, as individuals,

[313] but holding them as to partnership liability, which means—as I take it—that they were sued as partners; in other words, the two partners doing business as, this title—so it is a partnership liability. It can't be anything else.

Mr. Hughes: May I ask one further question? Then against whom will the judgment run?

The Court: The defendants in the Complaint who have not been dismissed. [314]

The Court: What if any objection do you have to Plaintiffs' submitted findings?

Mr. Hughes: Well, I have some objections, your Honor, to them. I would add in that other matter we have just finished, if your Honor would like to have security, I would be glad to put up any security the Court would suggest if your Honor would let this matter go over until a new trial is heard.

The Court: No; I will settle findings now. We can do that now.

Mr. Hughes: I object to paragraph 6. It says: "Defendants made numerous sales of Douglas fir and other West Coast surfaced lumber between July 11, 1944, to and including December 22, 1944, * * *"

Now, your Honor, there is nothing in the record to show that the Defendants made any sales of surfaced lumber. If your Honor will remember the stipulation that was agreed upon between the Plaintiff and Defendant, first we agree that this is a penal action and that these regulations,—539 is a Service

regulation covering service charging and 26 is a commodity regulation establishing maximum prices for the sale of lumber.

And the stipulation further provides that the "M. A. Wyman Lumber Company sold, shipped, invoiced and received payment for 3,122,732 feet board measure of Rough Lumber from July 10, 1944, to and including December 22, 1944. That these figures were obtained from invoices the originals of which are now within the possession of the Defendants herein, * * *."

And the stipulation further says: "That it received payment for this lumber in the sum of \$89,-427.38. That said latter sum is in accordance with the prices set forth in RMPR 26."

So there can be no dispute as to the rough lumber.

Now the invoices do not show that M. A. Wyman [322] or any of these Defendants at any time surfaced any lumber. The only testimony I think on that question was given by Mr. Rothfield who stated that he had not investigated and all he knew was what was shown by those invoices and what he could find out from others.

What he could find out from others of course is hearsay and invoices themselves show that there was no surfaced lumber sold by any of the Defendants.

The Defendants sold rough green lumber. The customer says, "Send this rough green lumber to the Granite Falls Planing Mills. Have them plane the lumber for me and then ship it to me."

But none of these Defendants—there is no evi-

dence, your Honor, showing that any of these Defendants ever sold any surfaced lumber.

The Court: All right. Your objection to paragraph 6 is overruled. What is your next?

Mr. Hughes: On paragraph XI, I don't believe that he has set out enough in paragraph XI that the Court can understand from the finding there that the conduct of the O.P.A. amounted to an estoppel and they had this application for a period of a year and did nothing whatsoever with it and then finally, believing in the meantime at least that they were violating the regulation at that time, waited until after the violation ceased and then [323] notified them that the application did not meet the requirements. I say I think I am entitled to more information as setting out those facts that I have just related.

The Court: Your objection to paragraph XI is overruled.

Mr. Hughes: Now as to paragraph XII, he says in the last sentence thereof: "The Granite Falls Planing Mill never filed any other application for permission to charge custom milling prices pursuant to the provisions of Maximum Price Regulation 539."

I think the Court will get the wrong inference from that because the prior regulation, that is, Supplementary Service Regulation to Maximum Price Regulation 165, was supplanted by 539 and the requirements are exactly the same. They are set out in exactly the same language. And it was not of course

necessary to file a new application under 539. Yet the Court would get that idea from reading that paragraph XII.

The Court: The objection to paragraph XII is overruled.

Mr. Hughes: Now paragraph XVI, the last sentence, he says: "The Granite Falls Planing Mill was used for the purpose of securing prices in excess of the prices admitted the Defendants by the provisions of the [324] Pricing Tables under Article 5 of Revised Maximum Price Regulation 26."

There has been no evidence here, your Honor, justifying that statement and I submit that the Granite Falls Planing Mill has never been used nor has there been any evidence admitted here showing that it has been used for that purpose.

The Court: The objection to paragraph XVI is overruled.

Mr. Hughes: Then I have proposed some additional findings. I think, your Honor, the facts are undisputed except possibly as to one of the findings except possibly our proposed finding No. 4.

I think the evidence sustains each one of those findings that I have proposed to the Court, namely, 1, 2, 3 and 5. I say I think they are undisputed. No. 4 the Court may feel differently about, but I think the evidence is undisputed as to those others.

Mr. Hitchcock: As to the proposed findings, paragraph 1 I have incorporated in my findings word for word I believe. Is that correct, Mr. Hughes?

Mr. Hughes: I don't know if it is word for word.

Mr. Hitchcock: As to paragraphs 2, 3, 4 and 5, I object to those on the ground that the facts do not [325] substantiate those findings and therefore I have to object to them at this time.

The Court: Mr. Hitchcock, this is only a small matter but you say here that the Granite Falls Mill was operating 500 feet. I think the evidence shows 1,000.

Mr. Hitchcock: I will be glad to change that. We had a stipulation I believe that said 500 but I think Mr. Doran's testimony was a thousand, so I think it should be changed to 1,000. It is perfectly satisfactory with us.

The Court: It should be 1,000.

Mr. Hitchcock: And as to the Defendants' proposed findings, as I said before, I believe it is true that paragraph 1 is incorporated in my findings.

Mr. Hughes: I would like very much if your Honor could see your way clear to postpone the time when the motion for new trial is heard. I would be glad to put up any security that your Honor may suggest.

The Court: Well, as to the findings of the Plaintiff, with that one change from 500 to 1,000 feet—do you have the original?

Mr. Hitchcock: The original is before the Court.

Mr. Ogden: If your Honor please, Mr. Hughes [326] did not mention any objection to the conclusions of law and I think that very clearly, paragraph 2 should be changed. That paragraph reads:

“Plaintiff is entitled to judgment against the Defendants and each of them in the sum of \$19,130.67 and his costs herein.”

I believe it should be interlined in there saying, “but not in their individual capacity,” because otherwise it is stated, “and each of them,” and they are named as individuals at the top in the heading to the case and I don’t see how Mr. Doran as an individual would be protected unless that was interlineated in there.

Mr. Hughes: I had not gotten to the conclusions yet but it does seem to me, in view of the fact that those two Defendants, M. H. Wyman and Edward Doran, have been dismissed from the suit, that the judgment should not be against them; that the only Defendant now in the case is M. A. Wyman.

The Court: It cannot be against them in an individual capacity because they have been dismissed.

Mr. Hitchcock: That is right as to their individual capacity.

The Court: Now as to your motion for a new trial, Mr. Hughes.

Mr. Hughes: Has your Honor signed the judgment [327] too?

The Court: Yes.

Mr. Hughes: I would like to except as I said to the findings as I just mentioned here,—I mean to the conclusions rather. I object to paragraph 2 of the Conclusions. I don’t know what your Honor has written in there. Now the same would apply to the judgment, paragraph 2 of the judgment entered against the Defendants and each of them in the sum of so many thousands of dollars.

The Court: Very well. The record may so show your exceptions.

Mr. Ogden: I should also like to make objection on behalf of the Defendant Doran because my feeling is this, that the judgment would be the last instrument in this trial. It would be the instrument on which the Plaintiffs might seek to levy against the property of the Defendant Doran and I would just question whether or not some court would go clear back into the original file and find that they had been dismissed when it did not recite so in the final Judgment that is entered. That is what concerns me. I think we all understand each other here but the matter might come up on a supplementary proceeding to attach the property of Doran maybe six months or a year from now and Mr. Hitchcock might be in San Francisco or New York and not even attached to the Office of Price Administration. [328]

The Court: No Court would let such an execution stand. Now as to the motion for a new trial.

Mr. Hitchcock: You would prefer that would be submitted on brief?

The Court: I prefer it. However, if you [334] gentlemen want to come to Arizona, you would be welcome.

The Court (Interposing): Each and all of the orders heretofore made apply to the Defendant Doran.

Mr. Hughes: I think if your Honor will just write in the date to which it is extended.

The Court: Mr. Ogden, do you have a motion for a new trial?

Mr. Ogden: I didn't this morning, your Honor. I hadn't determined because I knew that I had ten days to determine whether or not I would make that motion. I had anticipated that your Honor would, in the order that was entered, exclude specifically Doran in his individual capacity. [335]

The Court: Oh, all of them are excluded in their individual capacity.

Mr. Ogden: In that case I doubt very much if we will go ahead any further in this matter.

The Court: Very well. In the event you care to, all rights and privileges extended to the Wy-mans are extended to Mr. Doran. If you care to take advantage of your right of appeal or anything else, you are entitled to it. That is understood, Mr. Hitchcock.

Mr. Hitchcock: Oh, yes. As a matter of fact, we will never try to enforce any judgment against Mr. Doran.

Mr. Ogden: Thank you.

The Court: Well, Mr. Hughes, in your Order you say "except Edward Doran." I will scratch it out and make it applicable to all defendants.

Mr. Hughes: That is satisfactory.

Mr. Ogden: All right.

The Court: This is all right I think.

Mr. Hughes: Do you have any objection?

Mr. Hitchcock: On the order?

The Court: Staying execution pending motion for new trial?

Mr. Hitchcock: No objection.

The Court: That concludes it, gentlemen. We will adjourn subject to being reconvened by the order [336] of the Court.

(At the hour of 11:40 a.m., Tuesday, October 1, 1946, proceedings in this case were adjourned subject to further order of the Court.)

CERTIFICATE

I, Merritt G. Dyer, Official Court Reporter, for the above-entitled Court, do hereby certify that the foregoing is a true and correct transcript of all the evidence and testimony adduced upon the trial of said cause, together with all objections and exceptions made and taken to the admission or exclusion of testimony or evidence, and all motions, offers to prove, stipulations and admissions upon the trial of said cause and rulings thereon.

/s/ MERRITT G. DYER,
Official Court Reporter.

[Endorsed]: No. 11701. United States Circuit Court of Appeals for the Ninth Circuit. M. A. Wyman; M. A. Wyman, doing business as M. A. Wyman Lumber Company; and M. A. Wyman, M. H. Wyman and Edward Doran, doing business as the Wyman Mill Company, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Filed August 4, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11701

UNITED STATES OF AMERICA,

Appellee,

vs.

M. A. WYMAN, d.b.a. M. A. WYMAN LUMBER
COMPANY and M. A. WYMAN, M. H. WY-
MAN, and EDWARD DORAN, d.b.a. THE
WYMAN MILL COMPANY, and
M. A. WYMAN,

Appellants.

STATEMENT OF POINTS AND
DESIGNATION OF RECORD

Come now the above-named appellants, M. A.
Wyman, d.b.a. Wyman Lumber Company, and M.

A. Wyman, M. H. Wyman and Edward Doran, d.b.a. The Wyman Mill Company, and M. A. Wyman, and hereby adopt as their statement of points and as their designation of the record necessary for the consideration of the above appeal, the "Statement of Points" and "Designation of Contents of Record on Appeal" heretofore filed with the Clerk of the District Court.

/s/ C. E. HUGHES,
Attorney for Appellants.

Due service of the within Statement of Points and Designation of Record, together with the receipt of a true copy thereof, is hereby acknowledged August 1, 1947.

/s/ J. CHARLES DENNIS,
/s/ JOHN E. BELCHER,
Attorneys for Appellee.

[Endorsed]: Filed Aug. 4, 1947.